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LOCALIZED LAW

The Babatha and Salome Komaise Archives

Kimberley Czajkowski

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OXFORD STUDIES IN ROMAN SOCIETY AND LAW

The aim of this monograph series is to create an interdisciplinary forum devoted to the interaction between legal history and ancient history, in the context of the study of Roman law. Focusing on the relationship of law to society, the volumes will cover the most significant periods of Roman law (up to the death of Justinian in 565) so as to provide a balanced view of growth, decline, and resurgence. Most importantly, the series will provoke general debate over the extent to which legal rules should be examined in light of the society which produced them in order to understand their purpose and efficacy.

Localized Law

The Babatha and Salome Komaise Archives

KIMBERLEY CZAJKOWSKI

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List of Abbreviations

Classical authors and works are mostly unabbreviated, and otherwise follow the conventions of the *Oxford Classical Dictionary*. Papyrological abbreviations follow Oates, J. F. et al. (2001). *Checklist of Editions of Greek, Latin, Demotic and Coptic Papyri, Ostraca and Tablets*. Fifth Edition. Bulletin of the American Society of Papyrologists Supplement 9. Oakville, CT: American Society of Papyrologists, with the following additions and exceptions:

- | | |
|------------|---|
| CPJ | Tcherikover, V., Fuks, A., Stern, M., and Lewis, D. M. (1957–64). <i>Corpus papyrorum Judaicarum</i> . Three volumes. Cambridge, MA: published for the Magnes Press, Hebrew University by Harvard University Press. |
| P. Avroman | Minns, E. H. (1915). ‘Parchments from the Parthian Period from Avroman in Kurdistan’, <i>Journal of Hellenic Studies</i> 35: 22–65. |
| P. Yadin | Lewis, N. (ed.) (1989). <i>The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri</i> . Jerusalem: The Hebrew University of Jerusalem; The Israel Exploration Society; The Shrine of the Book.
Yadin Y., Greenfield, J. C., Yardeni, A., and Levine, B. A. (eds.) (2002). <i>The Documents from the Bar Kokhba Period in the Cave of Letters. Hebrew, Aramaic and Nabataean-Aramaic Papyri</i> . Jerusalem: The Israel Exploration Society. |

Rabbinic Sources

- | | |
|------------------|--------------------|
| <i>b.</i> | Babylonian Talmud |
| <i>m.</i> | Mishnah |
| <i>t.</i> | Tosefta |
| <i>y.</i> | Jerusalem Talmud |
| <i>B. Bat</i> | <i>Baba Batra</i> |
| <i>B. Meṣīʿa</i> | <i>Baba Meṣīʿa</i> |
| <i>Gīt.</i> | <i>Giṭṭin</i> |
| <i>Ketub.</i> | <i>Ketubbot</i> |
| <i>Kid.</i> | <i>Kiddushin</i> |
| <i>Meg.</i> | <i>Megillah</i> |
| <i>Moʿed</i> | <i>Moʿed</i> |
| <i>Sanh.</i> | <i>Sanhedrin</i> |

Legal Sources

C	<i>Codex Iustinianus</i>	<i>Inst. Gai.</i>	<i>Institutiones Gai</i> (Institutes of Gaius)
D	<i>Digesta</i>	<i>Inst.</i>	<i>Institutiones</i> (Institutes of Justinian)

Introduction

In 106 CE, the Romans annexed the client kingdom of Nabataea and established the new province of Roman Arabia. The circumstances that led to this annexation remain shrouded in mystery. This may have been a bloodless takeover after the last king's death, or a rather more hostile move. In either case, the lives of the area's inhabitants were irrevocably changed.

Amongst those who experienced this takeover were the two Jewish families of Babatha and Salome Komaise. They both lived in a village called Maoza on the south coast of the Dead Sea. The family archives that have come to be named after these women cast new light on the ways that their community coped with their changing situation. Their documents are legal and administrative in nature, including sales and purchases, receipts, census declarations, and marriage contracts. They were written both before and after the annexation, meaning that they provide us with a valuable window into how people coped with the process of 'provincialization' in their daily lives.

This window opens onto a world beyond what we might traditionally consider purely 'legal' questions. Legal documentation and papyrological evidence in general give us a wealth of information about life in a particular community. Unified archives such as that of Babatha are of added value: we can trace genealogies when the archive includes documentation belonging to several generations, and track the changing habits of a family or its individual members. From the kinds of property dealt with or the amounts of money loaned, we learn details of economic life. We may be offered a glimpse into social interactions from who signed which documents, or who gave money to whom. We can learn more about the status of women in a community from how they were able to conduct their affairs. In short, archives can offer us

ground-level, community-specific information that would otherwise very often be lost to us.

Written documents also put on display the knowledge—or sometimes the lack of it—of the people involved in writing them. When dealing with questions of legal history and the operation of law in the provinces, this is not to be underestimated. Such documents provide us with a glimpse of how peregrines dealt with the uncertainty that the advent of the Romans doubtless involved. How should they now manage their legal transactions? How much knowledge did they have of their new rulers' legal 'system'? Or indeed of that which they had used previously? And how did they apply this knowledge or adapt their behaviour in their day-to-day lives?

These particular archives exhibit astonishing levels of legal diversity, including elements of or direct references to various 'systems' of law: Jewish, Nabataean, Roman, and Hellenic. This variety has naturally attracted a large amount of attention from across the scholarly community, including papyrologists and, of course, Roman, Jewish, and legal historians alike. In particular, the 'operative law' of this community has become something of a burning question and, in a situation where multiple legal 'systems' appear to have coexisted for a long time, establishing that which prevailed in particular documents has proven a far from straightforward task. Controversy has and still does rage: ask two scholars which law prevailed across the archives or, in some cases, even within a single papyrus and you are likely to get very different responses.

I have chosen to take a different tack. As such, anyone hoping to find an answer to the question of which 'operative law' prevailed in the following pages will be disappointed. Rather, I wish here to take full advantage of the opportunity that evidence of this nature offers us: that is, the chance to undertake a very specific case study of the way that these two women, their relatives, and their contacts conducted their legal transactions. From these documents, I shall begin to build up a picture of how these people handled their new situation, how legal transactions were carried out, and disputes were settled. The aim, in fact, is not to identify the 'legal system(s)' of these documents at all but rather to try to understand the 'legal culture' of this multi-legal community. Such a history of the transactions and disputes in these archives will touch at all times upon the social, economic, and cultural lives of the people involved. Levels of

knowledge and the importance of interactions between individuals and groups become the key to understanding how ‘law’ operated at ground level. In short, the fact that such documents do offer us glimpses into aspects of life other than the strictly legal is no coincidence, and it is these other aspects—social interactions, status, literacy, legal knowledge, economic wealth—that are vital to understanding how people dealt with the legal problems that they encountered during the period following the annexation.

I take my lead in this from recent developments in Roman law scholarship more widely in the last few decades, especially studies of legal pluralism and multi-legalism. It is hoped that the archives may serve as a case study to provide insight into the possibilities that such an approach offers for understanding law in the provinces more generally, and its operation in small, face-to-face communities in particular. Since such concentrated bodies of evidence from very specific communities are rare (outside Egypt at least), they should be utilized to the full in attempting to understand law in the empire from the ground up. What results is a more perception-based study of legal interactions that emphasizes at all times the importance of considering the specific people involved and the levels of knowledge, expertise, or authority they brought to such cases. If this differs from the more traditional study of these archives—or from law in general—that is not to undermine the latter’s value, but merely to suggest that taking an alternative approach to such evidence may provide us with a rather different understanding of law in the provinces.

THE ARCHIVES

The Annexation of the Nabataean Kingdom

The client kingdom of Nabataea came under direct Roman rule in 106 CE.¹ The uncertainty about the exact circumstances of the province’s annexation is frustrating, since the level of resistance to or acceptance of the Romans’ arrival on the part of the Nabataeans

¹ This was the area ‘extending across the Sinai from Egypt into and encompassing the Negev, together with the entire territory of Transjordan, from the Syrian Hawrān to the Gulf of “Aqaba”’ (Bowersock 1983: 2).

would probably have had a significant effect on their daily lives in the years immediately after the annexation. The theory that the area was incorporated into the Roman Empire after the death of Rabbel II has won considerable, if often tentative, support.² Under such circumstances, we might expect the annexation process to have been relatively peaceful.³

Even if it only came under direct Roman rule at the beginning of the second century, this region had hardly been isolated from Rome in the preceding years.⁴ It seems to have become a client kingdom in around 55 BCE,⁵ and indeed was the last part of Syria to be formally annexed in the early second century CE. We know very little about how the kingdom was organized internally during this period,⁶ but its architecture shows a distinct Hellenistic–Roman influence that suggests some form of cultural contact.⁷ Furthermore, Strabo indicates

² See, for example, Starcky (1966: 920), Peters (1977: 275), Bowersock (1983: 79–82), and Ball (2000: 63–4). MacAdam (1983: 107) states somewhat more neutrally that the increasing loss of control by the Nabataeans over internal and external affairs was a contributing factor in the kingdom's annexation. For a summary of other scholarly views on the subject, see Fiema (2003: 43–4).

³ Al-Otaibi (2011: 63–85) suggests the takeover may have been more violent; Wenning (1993: 86–93) connects a religious and national renovation under Rabbel II with the conquest of the Nabataeans, rather than a peaceful takeover; see also Schmid (2000: 139–46) and Wenning's (2007: 40) brief summary of his own past arguments.

⁴ Bowersock (1983: 54) suggested that the Nabataean kingdom might have briefly been annexed in Strabo's time, before being handed back into the native king's hands as a client kingdom once again: this was based on Strabo, *Geographica* 16.4.21, in which it is stated that 'νῦν δὲ' (but at present) the Nabataeans and Sabaeans were 'ὑπήκοοι' (subjects) to the Romans. I am more inclined to view ὑπήκοοι as a less specific term that could refer to a client kingship, but in any case this very brief period of annexation would make little difference to the provincialization process a century later. More generally on Strabo/Athenodorus' comments about the Nabataeans, see Wenning (2007: 34–6).

⁵ See Ball (2000: 62) for brief comments on this, with reference to the (lack of) sources.

⁶ See Jones (1971: 291) for the little we do know.

⁷ See Bowersock (1983: 61); see also Wenning (2007: 30–4) for an overview of Hellenization in the first century BCE and the Augustan age, and *passim* for a more up-to-date summary of Nabataean history, though note Wenning's (2007: 25) opening claims that little has changed since Bowersock (1983). The edited volume in which Wenning's publication appears does, however, give a generally good survey of the state of research on various aspects of Nabataean history: see Politis (2007). There has also been a considerable amount of concentration on the religious history of the Nabataeans, on which see, *inter plurima alia*, Healey (2001) and Alpass (2013).

that Petra was a fairly cosmopolitan city in the late first century BCE or early first century CE:

γενόμενος γοῦν παρὰ τοῖς Πετραίοις Ἀθηνόδωρος, ἀνὴρ φιλόσοφος καὶ ἡμῖν ἑταῖρος, διηγείτο θαυμάζων· εὗρεῖν γὰρ ἐπιδημοῦντας ἔφη πολλοὺς μὲν Ῥωμαίων, πολλοὺς δὲ καὶ τῶν ἄλλων ξένων· τοὺς μὲν οἶν ξένους ὁρᾶν κρινομένους πολλάκις καὶ πρὸς ἀλλήλους καὶ πρὸς τοὺς ἐπιχωρίους, τῶν δ' ἐπιχωρίων οὐδένας ἀλλήλοις ἐγκαλοῦντας, ἀλλὰ τὴν πᾶσαν εἰρήνην ἄγοντας πρὸς ἑαυτούς.

At any rate, Athenodorus, a philosopher and companion of mine, who had been in the city of the Petraeans, used to describe their government with admiration, for he said that he found both many Romans and many other foreigners sojourning there, and that he saw that the foreigners often engaged in lawsuits, both with one another and with the natives, but that none of the natives prosecuted one another, and that they in every way kept peace with one another.⁸

As such, while the imposition of new rulers would certainly have had an impact on their subjects, this is not to say that every aspect of the new regime would have been completely foreign and unfamiliar. Contact had existed before—at least in larger cities—and we should perhaps bear this in mind in considering how people then adjusted.

The Documents and the Community

While the exact circumstances of the annexation remain shrouded in mystery, its effects are more transparent. This is due in no small part to the survival of the Babatha and Salome Komaise archives. Indeed, these documents offer us a wealth of information about people's experiences of the provincialization process. A more detailed introduction to the archives will be provided in Chapter 1, but at this point it is worth giving a brief outline of the circumstances of the finds and the general information about the community that the archives provide.

Though Babatha and Salome Komaise lived in Roman Arabia, the two archives were found over the border in what would have been Judaea, and thus form part of the Judaeian desert documentary

⁸ Strabo, *Geographica* 16.4.21. The text and translation of Strabo throughout are from the Loeb edition. On Petra during the Roman period, see Fiema (2003), who argues against its supposed 'decline'.

corpus. Indeed, various sites in the Judaeen desert have yielded a wealth of documentary material, which has served to supplement our knowledge of the region in antiquity. These also constitute a valuable body of papyri outside Egypt, where the majority of such evidence previously originated.⁹

Babatha's archive was uncovered in the Cave of Letters in Naḥal Hever, on the western coast of the Dead Sea, during a series of controlled excavations conducted by Yigael Yadin in 1960–1. The papyri were still held in the leather purse in which she had so carefully wrapped them. This unity of find for the Babatha archive is particularly valuable in light of the fact that we lack a similar luxury for many of the other documents from this area. These, instead, came from the Bedouin. The archive of Salome Komaise is among the latter category.¹⁰ While P. Hever 65 (= P. Yadin 37), Salome Komaise's marriage certificate, was found in the Cave of Letters during the controlled excavations, the rest of the archive has had to be pieced together at a later date from documents that were originally thought to have originated from a different area of the Judaeen Desert—Naḥal Şe'elim. Salome's archive, much smaller than that of Babatha, is therefore now thought to have come from the very same Cave of Letters as that of her contemporary.

Both Babatha and Salome Komaise lived in a village called Maoza, on the southern coast of the Dead Sea. It is probable that they knew each other, since aside from the fact that their documents came to rest in the same cave, they are witnessed by some of the same people and their family properties shared certain neighbours.¹¹ The papyri in the archives date, for the most part, from c.94–132 CE. Significantly more survive from Babatha's archive than that of Salome Komaise: thirty-five documents were in Babatha's purse; yet only eight have been identified that are thought to have belonged to Salome Komaise or

⁹ See Cotton, Cockle, and Millar (1995) for a survey of the Near Eastern papyrological finds; Palme (2011: 882–4) also provides an updated overview of the newer papyrological evidence outside Egypt.

¹⁰ They were brought to the Palestine Archaeological Museum, now the Rockefeller Museum, in August 1952 and July 1953. See Cotton and Yardeni (1997: 1–6, 158) for more details on the provenance of these texts, which form part of what was originally designated the Seiyāl Collection.

¹¹ P. Hever 64, l. 11/32–3 mentions the 'heirs of Yosef son of Baba' (κληρονόμοι Ιωσηφος Βαβα), who also appear in P. Yadin 7, l. 6/38 (ירחי יוסף בר בבא) (see also l. 11/45; l. 12/47). On the same witnesses appearing in both archives, see Cotton and Yardeni (1997: 159, 220).

her family.¹² Nevertheless, the two archives are similar in nature. They are both multilingual, including either whole documents or subscriptions written in Greek, Nabataean Aramaic, and Jewish Aramaic. Many of the papyri are double documents, meaning that the text was written out twice on the papyrus, one version above the other, with the upper or 'inner' text rolled up and sealed. The idea was that the upper version could later be unrolled and checked against the lower to prevent forgery, though how effective this was is somewhat debatable, since the inner version of the text is often highly abbreviated.¹³ In general, both archives consist of similar kinds of legal paperwork, including deeds of gift, sales contracts, marriage contracts, census returns, and, in Babatha's case, two series of petitions and summonses that form the basis of litigation which seems to have been destined for the Roman governor's court.

Both women appear to have come from the higher end of the economic scale: a great deal of property is evidenced in both archives and large sums of money also change hands. The household items and clothing of extremely high quality that were discovered in the cave along with the papyri further attest to the wealth of the people who found themselves there, if not Babatha and Salome Komaise specifically. In short, we are not dealing with people on the poverty line—the individuals the archives document clearly belonged to the upper level of local society, in economic terms at any rate.

The majority of the people in both archives, and the two families in particular, were Jewish. Aside from the preponderance of Jewish names that appear in the documents, several other details speak to their Jewish context. The cave where the documents were found was

¹² Cotton, in Cotton and Yardeni (1997: 158, n. 1), raises and dismisses the possibility of adding another document to Salome Komaise's archive. The document count in Babatha's archives rises to thirty-six when we include P. Yadin 36 (= P. Starcky), which is dated considerably earlier than the other papyri (c.58–67 CE). This document is a renunciation of claims that was not found in Babatha's leather purse, but refers to the garden of Nikarchos that we later find in P. Yadin 21 and 22. Thus, there may be reason to think it belonged with her other documents (*contra* Yardeni (2001: 128); Eshel (2002: 171) suggested it belonged to the Salome Komaise archive).

¹³ See Meyer (2007: 63–73) on double documents in the Judaean desert corpus; Cotton (2003a) also provides an excellent overview of this phenomenon in the Near East. More broadly on double documents and for examples, see: Koffmahn (1968); Wolff (1978: 57–80); Turner (1978: 28–44); Boswinkel and Pestman (1982: 176–81, 190). On the demise of the double document in Egypt, see Yiftach-Firanko (2008: 203–18), who also summarizes earlier views.

one that was used by Jews as a refuge after the Bar Kokhba revolt, which began in 132 CE. Documents belonging to various members of the Bar Kokhba regime, including letters of Shimon bar Kosiba himself, were found in the same cave as Babatha's papyri, and nearby Engedi was a stronghold of the Bar Kokhba forces. Indeed, the fact that Babatha's second husband Judah owned property there may have been one reason she chose to flee to these particular caves. Furthermore, in one document (P. Yadin 12), Babatha's son Jesus is explicitly described as a *Ἰουδαῖος*, a 'Judaean'/'Jew',¹⁴ and Babatha's marriage certificate to her second husband Judah is often identified as an early example of a *ketubbah*—a Jewish marriage contract (P. Yadin 10). Thus, while none of the principals describe themselves as Jews, there seems to be little doubt that we are dealing with a Jewish community here.

This community appears to have had good relations with their non-Jewish neighbours: Nabataeans and Romans are also in evidence in the archive, with little sign of tension. Judah, Babatha's second husband, borrows money from a Roman centurion (P. Yadin 11), and among the guardians of the various wards in the Babatha archive are (judging from their names) two Jews, one Nabataean, and one woman with a very Roman-sounding name: Abdoōbdas, John, Besas, and Julia Crispina. Furthermore, the documents frequently attest both Nabataeans and Jews acting as active parties to transactions, or offer a combination of Nabataean and Jewish names as witnesses or subscribers to the documents. Babatha and Salome Komaise's circle of acquaintances therefore appears to have regularly encompassed non-Jews.

Yet if these women lived in Maoza, how did the two archives end up in a cave on the western coast of the Dead Sea, over the border in Judea? The last document of the two archives is dated to 19 August 132 CE, around the time of the outbreak of the Bar Kokhba revolt. The

¹⁴ The translation of this term is hugely contested, and is bound up with the debate of whether or not we should understand 'Jews' in antiquity as an ethnic group. The bibliography on this subject is extensive and rapidly growing: the most oft cited English language article on this is Mason (2007); see also the German monograph by Eckhardt (2013) on conceptions of *ethnos*. This issue will be raised again in the Conclusion but not tackled head on in the current study: as such, I use 'Jew' as a default term throughout, but this should not be taken as indicating a position in this particular debate. Rather, the results of this analysis could be factored into future discussions.

two women, along with others in their community, seem to have fled to the caves at this time—significantly taking their much-valued paperwork with them. This may have been to escape feared reprisals from the Romans when the revolt broke out;¹⁵ as mentioned, the Cave of Letters is known to have been used as a refuge for Jews after the revolt. Conversely, perhaps the community chose to show support to the rebels and so crossed the border.¹⁶ No hint of sympathy with the rebel cause is found in the archives, nor awareness of the planned revolt, though perhaps we should not expect it in documents of this nature.

These people appear ultimately to have died in the cave to which they fled. Along with the documents and the possessions of those who spent their last days there, more than twenty skeletons were found in the Cave of Letters, one of which may have been Babatha's.¹⁷ But despite the lack of certainty about these women's ends, their documents offer invaluable evidence about this community and particularly how its members lived during a period of—seemingly rapid—provincialization. They provide on-the-ground information about people's dealings. Moreover, as family archives, they offer insight into how different members of the same family handled certain issues, how the same members handled different legal problems, and even how this may have changed across generations.

Approaches to the Archives

The archives have not lacked attention in the scholarly world: on the contrary, a number of different specialisms have been drawn to this evidence—papyrologists, legal historians, historians of the Roman provinces, scholars of Jewish studies and, a little more recently, of the New Testament have all taken a great interest. Most of this work brings with it the strengths of each particular field, but the flip side of the coin is that it can therefore also tend to be rather technical in

¹⁵ Suggested by Lewis (1989: 4) in his publication of the archive. Yadin (1962: 251) also thought the family had fled to an area of Judaea not under the control of the Bar Kokhba rebels; Goodman (1991: 175) simply states that they 'were caught up in the war of 132–135 CE and died in consequence'.

¹⁶ Indeed, Cotton and Yardeni (1997: 159) refer to 'their participation in the Bar Kokhba revolt'.

¹⁷ Yadin certainly believed this was the case: see comments in Lewis (1989: 5).

nature, and these technicalities are aimed at a particular, specific, and often extremely specialized audience. The broad range of fields involved also means much of this work is rather scattered. As such, a brief overview of the state of research is something of a necessity here. I must, however, add the caveat that the following focuses on work that has dealt with legal aspects of the papyri: this constitutes a large proportion of the previous literature, but is also a specific concentration in and of itself, and of necessity excludes important work on other aspects of the archives.¹⁸

The delayed publication of the Babatha archive and the relatively recent piecing together of that of Salome Komaise also meant that the scholarly community had a long wait after the documents' discovery before the archives could be worked upon in their entirety. This somewhat complicated the history of scholarship on these documents, as only single papyri were available at an early stage, along with what must have been tantalizing sketches of the general contents of Babatha's purse. Indeed, it was not until 1989 that all the Greek papyri in the Babatha archive were published, the preparation of the Greek texts having been entrusted to Naphtali Lewis after Yadin's death.¹⁹ Lewis obviously expected that the publication of the Aramaic documents would follow shortly: the introduction to his volume explicitly indicates that certain sections will be dealt with in the next. Unfortunately, however, these did not emerge until 2002; their publication was undertaken by Joseph Naveh, Ada Yardeni, and Jonas Greenfield, whose role was taken over by Baruch Levine after Greenfield's sudden death in 1995.²⁰ Six documents belonging to Salome Komaise were first identified as a unified archive by Hannah

¹⁸ Most notably, that of women's history or gender history, on which, see Ilan (2012a) and (2000).

¹⁹ See Joseph Aviram's prefaces in Lewis (1989: ix–x) and Yadin et al. (2002: ix–x) for more details on the publication process. Polotsky, who was originally working on the Greek part of the Babatha archive before excusing himself due to ill health, published an initial overview of its contents: see Polotsky (1962). He followed this up with the publication of three documents in Polotsky (1967) (in Hebrew): P. Yadin 15 (though labelled as 12 in this early publication) (a deposition), P. Yadin 27 (a receipt for maintenance), and P. Yadin 28–9 (the so-called 'judiciary rule'). Yadin (1971: 222–53) also gave an account of the discovery and nature of the Babatha archive; see also Yadin (1962: 235–48) and Yadin (1963) for earlier summaries.

²⁰ Yadin et al. (2002: ix–x). Along with the listed editors—Yadin, Greenfield, Yardeni, and Levine—additional contributions to this volume were made by H. M. Cotton and J. Naveh. Two of the Aramaic papyri from the Babatha archive had been published previously: P. Yadin 7 in Yadin, Greenfield, and Yardeni (1996)

Cotton in a 1995 article;²¹ Cotton updated this work in 1997, when the number of documents belonging to the archive was raised to seven.²² Since then, a further papyrus has been attributed to the archive by Hanan Eshel.²³

Consequently, with a few notable exceptions,²⁴ little substantial study of the archives emerged until the 1990s, thirty years after their excavation. This was primarily on the Greek documents, and it has only been in the last decade that the full archives have been available to the scholarly community at large. Since the full publication of the Greek part of the Babatha archive, the papyri have not lacked attention and the literature grew extremely quickly. Several notable contributions merit attention in this context. First are the series of articles by Hannah Cotton published throughout the 1990s and 2000s. Most of these focus on a specific aspect of law or indeed on single documents: Cotton, for example, though she has published on a range of topics relating to the archives, devoted a good number of articles to the problem of succession.²⁵ This has tended to characterize much of the work on these papyri: either single themes or individual/a choice few documents were selected as the topic of papers. Ranon Katzoff and David M. Schaps's edited volume, *Law in the Documents of the Judaean Desert*, published in 2005, continued this theme with a collection of essays that addressed individual aspects of the Judaean desert papyri, a few of the documents, or particular legal problems

(in Hebrew) and Yardeni (2000a: 93–102) (in Hebrew), with an English translation in Yardeni (2000b: 45–9); P. Yadin 10 in Yadin, Greenfield, and Yardeni (1994) and Yardeni (2000a: 125–30) (in Hebrew), with an English translation in Yardeni (2000b: 56). One further papyrus, P. Starcky (= P. Yadin 36) was also published early, though its place in the archive has been disputed: see Starcky (1954) for the papyrus; and see n. 12 for the possible connection to the archive.

²¹ Cotton (1995a). The documents identified as belonging to the archive are those later labelled as P. Hever 12, 60, 61, 63, 64, and 65.

²² The documents that were then included in the archive were published in Cotton and Yardeni (1997: 60–4, 158–237); P. Hever 62 had been added to those documents identified in Cotton (1995a) (see n. 21).

²³ Eshel (2002) added P. Hever 2.

²⁴ For example, Bowersock (1983: 76–89) devoted an entire chapter to the Babatha archive in his history of Roman Arabia: see also n. 19 and n. 20 for further early publications of certain documents: Lemosse (1968), Seidl (1968), Biscardi (1972), Lewis (1978), and Wolff (1980) all discuss these.

²⁵ On this subject, see Cotton and Greenfield (1994), Cotton (1996a) (in Hebrew), (1997a), and (1998a).

therein.²⁶ Thus, while the collection was a significant step in dedicating an entire volume to the laws of the papyri, it did not amount to a full and coherent study of the functioning of law in this area, and indeed was never intended to do so.²⁷

The first and so far only full-length book on the subject came in 2007 in the form of a former PhD thesis in Legal History by Jacobine Oudshoorn: *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives: General Analysis and Three Case Studies on Law of Succession, Guardianship and Marriage*.²⁸ As the title suggests, this was divided into two parts: a general introductory/methodological section, followed by a set of three case studies. Oudshoorn, though once again working primarily through case studies of specific fields of law, attempted to consider the functioning of law in the archives and the area from which they originated as a whole, rather than simply focusing on particular aspects of law. She saw the community that the archives document as operating under a Jewish 'substantive' legal framework, but thought that, in terms of 'formal' law, the papyri may have been designed to conform to a different legal system: Hellenic or Roman, for example. The book remains a significant contribution to scholarship on the documents and, indeed, is the closest we have come to an attempt to understand the functioning of law in general in this community.²⁹

These three works, or rather series of works, are but a small sample of the most significant contributions to scholarship on the subject. They are, however, representative of the general approach that has typically been taken to the law(s) of these papyri. Essentially, scholars have concentrated on identifying legal formulae or finding parallels in the phrasing of the documents with the various legal 'systems' in operation at the time, though it should be noted that the legal texts to which they typically have recourse for comparison are often codified or redacted in a much later period. So, to take one example,

²⁶ Although the volume is dedicated to the Judaean desert papyri more broadly, in fact many of the contributions focus on these two archives.

²⁷ The editors instead aimed to 'stimulate further thought' on a series of problems connected to the documents: see Katzoff and Schaps (2005a: 6).

²⁸ A further monograph on the subject by Philip Esler (forthcoming) is soon to be available, which focuses on the Nabataean papyri: I regret that I cannot give a more detailed overview of the work here since it is yet to be published, but it constitutes an extremely important contribution to the study of the laws of the Nabataean documents.

²⁹ Evans Grubbs (2009) offers a considered review of the book's flaws and merits.

the appointment of two guardians (rather than one) in P. Yadin 12 is compared with Roman practice and assessed against it to deduce whether this is evidence of 'local' or Roman legal tradition. Naphtali Lewis saw it as the former,³⁰ while more recently Tiziana Chiusi observed that the number of guardians was not fixed in Rome,³¹ meaning that the appointment of two did not necessarily conflict with Roman practice. In each of these cases, the practice is identified and compared with another known legal system (in this instance, Roman). A conclusion is then reached about whether it corresponds to that system or not, and, if it does, the document is then thought to function under that 'operative law'. As this example makes clear, such conclusions can differ significantly.

This method stands in line with the traditional approach taken in Roman law scholarship that will be outlined below, and involves careful consideration of individual phrases and the possible parallels in various bodies of law, be they Jewish, Roman, Greek, or Nabataean. These are more or less problematic endeavours, depending on the amount of information available about such bodies of law. While we know little of Nabataean legal tenets, we are much better provided for in the rabbinic and Roman spheres. This increase in available information, however, providing as it does a 'norm' against which the documents may be compared, brings its own problems, as does the fact that most of this evidence was codified considerably later than our period.

Nevertheless, there is great value in this traditional approach. The commentaries in the published volumes of the papyri offer astonishingly detailed, careful examples of this kind of comparative work.³² Cotton's extensive work on these documents builds upon this, as do the two main recent studies of the laws used in these archives (mentioned above, pp. 11–12).³³ The importance of such work should not

³⁰ Lewis (1989: 48), though he also notes the appointment of two guardians in M. Chr. 88 (c.150 CE).

³¹ Chiusi (2005: 107); Chiusi (1994: 185, n. 84); see also Oudshoorn's (2007: 312, n. 39) comments on this observation.

³² Yadin et al. (2002); Cotton and Yardeni (1997); Lewis (1989).

³³ Namely Oudshoorn (2007) and Katzoff and Schaps (2005b). In the latter edited volume, Michael Satlow's contribution is a possible exception to this general approach. He adopts what he calls an 'instrumental' method, in order to understand 'a family at work,' rather than placing the documents in the context of a particular legal framework: see Satlow (2005: 53, 65) on his chosen methodology. Ilan (2012a) also takes a noticeably different approach from the norm.

be underestimated. It illuminates the complexity of the legal world in which the parties operated and the incredible diversity of legal phraseology, spheres, and traditions which could combine even within a single contract. An understanding of the documents themselves and the legal 'systems' that they evidence is vital to any further study of the sociolegal context in which they operate.

Behind this traditional approach is, however, an implicit assumption that phraseology and formulae played a vital role in indicating and even determining legal sphere. This in turn suggests that on some level people were thinking in terms of 'systems' of law, and that we may detect the law under which a particular document operated from a close examination of its phrasing, legal substance, and diplomatics. In Cotton's words:

The diplomatics of ancient documents can often give us important clues about the legal system (or systems) in operation in the documents themselves. Moreover, legal systems can intersect in one and the same document.³⁴

This is certainly true in that the way contracts were drawn up reflects particular conventions that are in turn associated with particular 'systems'. These can then be identified from careful examination and comparison of documents. Various traditions, or 'legal systems', as Cotton puts it, may also be reflected in one and the same papyrus. As such, the specifics of the formulation of a document are extremely important. Moreover, the 'legal systems' approach can help us to understand what features are included in a document, and how many and varied the legal elements within these papyri truly are. Where problems arise is when we deal with contradictory evidence, and the formulation of a document contains features that refer to two or more different legal 'systems'. It is then that attempts to identify one particular 'operative law' over and against another begin to run into trouble.

'PROVINCIALIZATION' AND ROMAN LAW

Most of this previous work on the archives stands in a long tradition of work on law in the Roman provinces. This is hardly a new area of

³⁴ Cotton (2003a: 50).

study, and it is worth briefly setting out the bare bones of the development of scholarship in this area in order to demonstrate how new advances in the subject may usefully be applied to understanding these archives in particular.

The extremely lengthy history of scholarship on law in the Roman provinces tended to see Roman law as a systematized, coherent body that came to be exemplified in the codifications from late antiquity. The concentration of such studies for a long time, therefore, centred on how local law or customs were incorporated into what was seen as the overarching legal system of the Roman Empire. The 1891 work of Ludwig Mitteis, *Reichsrecht und Volksrecht*, was, of course, particularly influential in this regard.³⁵ Yet, although Mitteis challenged the previously accepted idea that there was only one prevalent (Roman) legal system, his model was still heavily influenced by the prevailing concepts of state and empire in his day. Underlying his work was a strong preoccupation with unification and the model of an orderly, centralized state into whose overarching legal system those of its subjects would be incorporated. These concepts had a long-lasting impact on the discipline. The lens through which both Roman law and the empire were viewed remained for many years a reflection of the contemporary way in which the state and state law were conceived in nineteenth-century Europe. Indeed, this unitary view of empire still has a hold on the work of many contemporary Romanists.³⁶

Such conceptions of law and empire were particularly evident in work concerning the effects of the *Constitutio Antoniniana* on the legal situation within the empire. Theoretically, at least, the effect of this was to make all free inhabitants of the Roman Empire citizens and thus bring them under the *ius civile*. This, it was for a long time assumed, led to the gradual death of local law and traditions in favour of the new, unified system.³⁷ How local law was accommodated, integrated, or excluded from this overarching legal unity provoked a variety of responses.³⁸ It was somewhat characteristic of these responses to conceive the problem in terms of ‘systems’ and levels of integration.

³⁵ Mitteis (1891).

³⁶ See Tuori (2007: 44) and *passim* for an excellent summary of the influence of these ideas; see also Ernst (2013). Bryn (2014: 347–50) also provides a good overview of recent developments in Roman-law scholarship.

³⁷ See, for example, the attitude that pervades Sohm’s (1911) handbook.

³⁸ Particularly relevant works on this general topic of the interaction between Roman and local law include: Mitteis (1891), Schönbauer (1937) on the concept of

This approach has raised long-acknowledged problems for studies of law in the provinces both before and after 212 CE. The level of integration or survival of local law or custom into the imperial legal system provoked much debate, exacerbated to a certain degree by the nature and extent of our evidence for the effects of this aspect of 'Romanization'—itself a contentious term. In short, for a long time most of our evidence came from Egypt and seemed to indicate quite clearly a slow 'Romanization' process, in which Roman law was not imposed uniformly from the top upon the inhabitants of the province.³⁹ This would appear to undermine the notion of a Roman goal of legal unification, or at least call into question the practical success of such a strategy.⁴⁰ Yet the extent to which we may extrapolate from this well-documented but not necessarily typical province to other areas of the Roman world is something of a vexed issue. In the last century, the evidence base has become rather more diverse, allowing for re-evaluations of the empire more broadly, and the interaction of local and Roman law within it.⁴¹ This in turn has allowed further scope for historical studies of law based on evidence from across the empire.

Furthermore, historical views of the nature of the Roman Empire have changed rather dramatically in recent years. Rather than viewing this as a unitary system imposing the dominant culture from above,⁴² the relationship between Rome and her empire's inhabitants has been treated as a more dynamic, two-way process. In more general studies of what used to be termed 'Romanization' various metaphors, including creolization and multilingualism,⁴³ have recently been employed

'provincial law', Méléze-Modrzejewski (1970) on the survival of Ptolemaic legal institutions under Rome and the concept of 'dual citizenship' (and indeed much of the work by this author: for a sample, see his collected papers in Méléze-Modrzejewski (1990)), and Amelotti (1999) on attempts by later emperors to minimize the import of local law. See also Tuori (2007) and Schiller (1978: 537–41, 545–7) for overviews of some of these notable works and further bibliography.

³⁹ Méléze-Modrzejewski (1993: 1004–5).

⁴⁰ See Galsterer (1986) on this subject.

⁴¹ See, for example, Migliardi Zingale (1999) on the impact of documentary finds from the Near East with extended consideration of Babatha's archive.

⁴² As espoused especially by Mommsen (1885) and Haverfield (1923): this conception of 'Romanization' was also influenced by the ideas of nineteenth- and early twentieth-century empires.

⁴³ These metaphors are often first applied in the study of material culture and then picked up to describe the phenomenon of 'Romanization' more generally: see Webster

to try to redescribe this process in a way that places less emphasis on unidirectional impact. Such changes in how we regard the Roman Empire and the ‘Romanization’ or ‘provincialization’ process mean that we must also reconsider our conceptions of the way law operated within it, rather than clinging to ideas that were so shaped by the circumstances of nineteenth-century scholarship. In the new, more fragmentary concept of empire there is room, and perhaps even a need, to explore the ways in which particular groups and individuals interacted with their Roman rulers, rather than attempting to identify empire-wide norms which can be applied to any community.⁴⁴

MULTI-LEGALISMS, ‘LEGAL CULTURE’, AND A ‘GROUND-UP’ APPROACH

As a result of these shifts, understandings of Roman law and the study of it have shifted quite dramatically in recent decades, leading to a new concept of law and empire. Legal pluralism, multi-legalism, or conflict of law in the fields of modern legal studies, sociology, and anthropology have all had a particularly striking effect on the most recent work in the discipline.⁴⁵ While much of this has been directed at the period after 212 CE, it is not without relevance to the earlier era. Furthermore, scholarship on the situation after the *Constitutio Antoniniana* often looks back to the previous situation.⁴⁶ The result has been a greater awareness of the complexity of the functioning of law in the Roman Empire in both periods—in the way that people

(2001) on creolization; Wallace-Hadrill (2008) for the application of multilingual theory.

⁴⁴ Meyer (2004: 3), remarking on the different models of the Roman Empire conceived by Romanists and historians, described the gap as a ‘chasm’ in need of a ‘rope bridge’.

⁴⁵ There is a wealth of literature on legal pluralism and conflict of law theory. Two good starting points are Twining (2010) and Berman (2009), who provide an overview of the field’s development and current state; see also Shahar (2008). Galanter’s work is particularly notable for its social idea of law: see especially Galanter (1981). With reference to the application of this literature to the ancient world, Pölönen (2006) summarizes the relevant literature well, while arguing for a reinterpretation of ‘socio-legal phenomena’ in the ancient world using the sociology of law.

⁴⁶ Or, indeed, scholars who typically focus on late antiquity have brought their approach to the earlier period: see Humfress (forthcoming) as an example.

approached it, and the multiplicity of legal traditions that subjects and rulers alike were compelled to acknowledge (to a greater or lesser degree), negotiate, choose between, decide upon, and generally deal with in their day-to-day lives.

In short, the new emphasis is on an idea of law in the ancient world that is far removed from past conceptions of Roman law as a unitary, formalized, and systematic body of rules. The focus in these studies is not on rules imposed from above, but instead contends:

It is more profitable to look at the issue of law and legal practice from the bottom up, and to ask whether, how and why Rome's subjects, as individuals or as groups, availed themselves of the Roman legal system.⁴⁷

Thus, we have shifted away from a sole concentration on law imposed from the top or indeed from a concentration solely on what the precise letter of the law was. Instead, how people approached and thought about it from their situation 'at the bottom' or 'on the ground' is factored into any understanding of the functioning of law within the empire. Papyrological evidence provides a particularly good source for studies of this kind, and indeed recent work on legal papyri from Egypt has taken just this type of 'ground-up' method to heart.⁴⁸ This approach, however, is not limited to papyrology but filters into considerations of law within the empire on a more general level.⁴⁹

One result of this has been that we have begun to move away from an idea of law as a rigid system of rules and started to see it as more of a socially constructed idea. This does not amount to a variation on the 'law-in-practice' or 'law-in-action' approach (as opposed to a 'law-in-the-books' one),⁵⁰ but demands a social understanding of law or, to borrow Caroline Humfress's phrase, 'law within lived experience'.⁵¹

⁴⁷ Humfress (2013a: 93). See also Humfress (2011: 43–6) on the importance of a 'ground-up' approach.

⁴⁸ Bryn (2012) and (2013) are especially good examples of this approach to the Egyptian papyri, as is Kelly's (2011) work on petitions and litigation.

⁴⁹ Kantor (2009) and (2012) are instances of work in which such considerations factor into general understandings of law.

⁵⁰ As Humfress (2013a: 92) and (forthcoming: 7) has demonstrated, this kind of approach typically leads to a kind of 'gap analysis', in which we attempt to determine how far the law transmitted in the books matches actual practice. While this is helpful in some respects, it lacks the concern with the specific social context of law and legal processes which is of particular interest here.

⁵¹ Humfress (forthcoming: 8).

Law, at all times, is firmly situated within its social, temporal, and geographical situation.⁵² To employ my own title: it is localized.

Another way in which the distinction could be configured is in the 'legal systems' versus 'legal culture' approaches. The former approach has been the traditional concern of Romanists and most scholarship touching on law in the Roman Empire in past centuries: clauses, terminology, and features of specific cases are examined in order to determine to which legal 'system' they belonged. 'Legal culture' on the other hand is a rather broad and highly contested term imported from various modern fields, including comparative law, anthropology, and sociology of law.⁵³ It was first used in the last-mentioned field by Lawrence Friedman, but was still a product of a rich history of work advocating an approach that attempted to understand law (not just practise it) and which had already linked law and culture together.⁵⁴ Though there is now a rich body of literature on 'legal culture', Friedman's own conception of the term is still a useful base point for discussion here: in his view, the term refers to 'the ideas, values, attitudes, and opinions people in some society hold, with regard to law and the legal system'.⁵⁵ There are a multitude of subdivisions that have been and still could be made within this concept: Friedman himself distinguished between 'internal' and

⁵² See Geertz (1983) for an anthropological approach to law that emphasizes just this localization of concepts of law: 'Law . . . is local knowledge; local not just as to place, time, class and variety of issue, but as to accent—vernacular characterizations of what happens connected to vernacular imaginings of what can' (Geertz 1983: 215).

⁵³ See Engle-Merry (2012: 58–62) for an overview of the origins of the term in these fields.

⁵⁴ See Carrillo (2014: 71–6) for an overview of where Friedman sits in the scholarly tradition, with a particular focus on Friedman (1989). The bibliography on this concept is immense: see Friedman (1969) for the original conception of the term and almost *passim* his prodigious body of work (further examples will be cited below, pp. 19–20, especially nn. 55 and 56); Friedman (1975) is another example of his early development of the concept. Cotterrell (1997: 15), in his critique of Friedman's concept, points out that his later definitions place less emphasis on behaviour and are more orientated towards ideas: for example, legal culture encompasses 'ideas, attitudes, expectations and opinions about law, held by people in some given society' in Friedman (1990: 213). On the anthropological side, Geertz's (1983) work has already been mentioned, to which Rosen (2006) should be added. In general, the following relatively recent edited volumes (some of the individual contributions of which are cited in the discussion that follows in this section) give a good overview of some of the main debates and contentions surrounding the term: Nelken (2012), Gordon and Horwitz (2014), Bruinsma and Nelken (2007), Nelken (1997).

⁵⁵ Friedman (1994: 118), with reference to Friedman (1990: 4).

'external' legal culture, the former being centred on how legal professionals view aspects of the law, the latter looking at the wider public's attitudes.⁵⁶ That includes a range of issues and factors: knowledge of law, attitudes and opinions towards law, and the behaviour of people in contact with and involved with the legal system, to name but a few. In short, the general concept—as it is used in legal sociological circles at least⁵⁷—encompasses precisely those ideas which have just been touched upon: namely, not simply 'formal legal materials (such as doctrines, statutes, cases, constitutions) or offices and institutions (such as lawyers, judges, courts)',⁵⁸ but also the world and people that surround and connect them. Indeed, typically it is the broad, all-encompassing, and rather nebulous nature of the term that underlies objections to its use in more modern spheres:⁵⁹ this has

⁵⁶ Friedman (1975: 223): 'The external legal culture is the legal culture of the general population; the internal legal culture is the legal culture of those members of society who perform specialized legal tasks.' See Friedman (1975: 193–267) more generally on the concepts. For thinking about antiquity, the 'internal' vs. 'external' division is a little more problematic, since those individuals I shall term 'scribes' or 'legal advisors' in the provinces may have had varying levels of connections to the Roman administration, and so their status as part of the 'internal' or 'external' categories could be extremely difficult to determine.

Further divisions have also been proposed, and indeed part of the objection to the use of the term 'legal culture' by Von Benda-Beckmann and Von Benda-Beckmann (2012) is that insufficient distinctions are made within the concept: they suggest, in passing, further divisions such as 'gender, class, age, rural/urban' (2012: 100). Deserving further mention is the contribution by Engle-Merry (2012), who suggests breaking the concept down into four constituent parts: 'practices and ideologies within the legal system'; 'the public's attitude towards the law'; 'legal mobilization'; and 'legal consciousness'. Nelken (2007) also proposed using the last term, suggesting this should be applied to the level of individuals, while 'legal culture' could be retained for the aggregate level; Silbey (2001) also advocated the use of 'legal consciousness' along with 'legal culture'.

⁵⁷ The use of the term differs depending on the field: comparative lawyers, for example, might use it to define 'the values and beliefs embedded into legal repertoires and procedures' (Von Benda-Beckmann and Von Benda-Beckmann 2012: 96).

⁵⁸ Silbey (2001: 8624), who goes on to define legal culture and consciousness as 'terms used to emphasize analytically ways in which formal legal institutions and everyday social relations intersect and share cognitive resources'.

⁵⁹ See n. 56 for some suggestions as to how the term could be broken down, which often arise from critiques of the concept and/or term. Cotterrell's (1997) and Nelken's (2007) general criticisms should especially be noted; though their cautions about using the term both to explain phenomena and as something that itself needs to be explained are called into question in the brief comments by Von Benda-Beckmann and Von Benda-Beckmann (2012: 103) (see their contribution *passim* for other problems with the use of this analytical concept). Further bibliography that discusses the problems involved may be found in n. 54.

been raised as a particular problem in legally plural situations, since it has been thought that employing one, single concept of 'legal culture' oversimplifies a complex situation and 'obfuscates the dynamics of choice' that we find in such environments.⁶⁰

In employing the term, I am not seeking to oversimplify what I shall argue is indubitably an extremely complex situation.⁶¹ Yet the concept is useful in this particular context as an analytical tool which helps us frame the focus of the current study over and against the more 'systems'-orientated approach that has previously dominated. That is not to say that the two are entirely separate entities, since in studying 'legal culture' we also interact with a pre-existing idea of a legal system (in modern contexts, at least) or more broadly 'law' (in ancient society).⁶² But when we are concerned with how law functioned 'at the bottom', talking about 'legal culture' is a useful way of framing the shift in focus, in which we move from looking primarily at legal texts and formulations to the significance of the values, attitudes, and opinions of the various people involved in any cases and contracts. In fact it has frequently been observed that the very same issues that make the concept of 'legal culture' problematic—its broad scope and the fact it is used in rather varying ways across disciplines—have also served to make it such an enduring and useful concept, particularly in facilitating dialogue between different fields.⁶³

It should be noted that choosing to focus on 'legal culture' in no way negates the value of the 'legal systems' framework. On the contrary, considering 'legal culture' in antiquity—employed here in the broad sense outlined above (pp. 19–21)—has the potential vastly to enrich our understanding of ancient law and society, rather than detract from the work that has already been done.

⁶⁰ Von Benda-Beckmann and Von Benda-Beckmann (2012: 99).

⁶¹ Taking up one of Cotterrell's (1997: 15) concerns, I am also not trying to use the concept for 'explanatory significance' but as an object to be examined and explained, hence 'as a residual category to refer to a general environment of thought, belief, practices and institutions within which law can be considered to exist'.

⁶² I shall come back to this problem in the Conclusion, pp. 199–200.

⁶³ See, for example, the comments by Engel (2012: 77–8): the versatility of the term makes it a useful analytical tool; Kurkichiyan (2012: 221) also argues for the utility of the term: 'It provides the broad vision that permits an assessment of what law is in that particular setting, how it works, and how it relates to other social constructs such as trust, justice, power, and group socio-legal identity.'

THE ARCHIVES WITHIN THIS MULTI-LEGAL APPROACH

How, then, do these developments affect our interpretation of these archives, or rather how should they affect it? Could a shift in focus—taking a lead from more sociological considerations of ‘law’ (outlined on pp. 17–21 above)—be a useful tool in understanding the community they document?

The traditional approach to these archives has revealed much, including the sheer diversity in the elements of legal ‘systems’ that we find in these documents and even within single papyri. This should not be underestimated, nor undervalued. However, the possible limitation of this approach is that we underemphasize the people involved in the documents’ making. By focusing so firmly on the formulaic aspects of the contracts, we both implicitly still think in terms of law imposed ‘from the top down’—since we base our analysis on a comparison with codified legal texts—and also lose sight of the human element at play in such documents’ construction and use. There were multiple actors involved in the transactions and conflicts we find in these archives, and it is this agency that is vital to understanding both the social and legal culture of this community.⁶⁴ This is where the multi-legal approach to law, and the shift towards attempting to understand ‘legal culture’, may provide new insight into the legal transactions in the archives.⁶⁵ It allows us to move away from concentrating purely on the formulaic elements of the papyri and instead examine the manner in which the litigants approached their legal business. As part of this, we need to assess the practical aspects of using both the documents and the legal process.

⁶⁴ See Bryen (2014: 257): ‘The consequence of the last decade’s new work in Roman legal history is that we now have to accept that the legal order as a whole was a product of the participation of many more actors than previous generations of scholars have been prepared to account for.’

⁶⁵ Indeed, Humfress (2013a: 89) has already pointed out the need for such work on the Babatha archive, and points to Satlow (2005) as one example of work that ‘begins to explore this alternative perspective’. It should be noted that Cotton (2007) recently interacted with some of the ‘legal pluralism’ literature, by examining the relevance of the modern concept of ‘private international law’ for the archives. More significant, perhaps, is her reinterpretation of three documents from the Judaean desert as settlements from arbitration in Cotton (2002a: 21–3), which, of necessity, factors in these considerations of ‘on-the-ground’ functioning and interactions.

This involves consideration of rather different questions from those involved in identifying parallels and the 'operative law'. In examining the documents 'from the ground up', we need to consider explicitly how litigants commissioned them to be made; whom they asked to write them and why; how much knowledge litigants, scribes, and judges had of the 'law'; how they acquired this knowledge; and indeed, ultimately and most fundamentally, what 'law' even meant in this context to all involved. Legal knowledge and access to it become key, and the very people involved in the cases these documents attest are placed at the heart of how law functioned.

Thus, the premise upon which such a study is based is that while people may have had a very clear concept of what the law was, this varied from place to place and person to person. This could result in very different interpretations and practical applications. This also may have led to misunderstandings, conflicts, or a process of redefining one's understandings when different people met and engaged with one another. One such setting might be a Roman court, when litigants encountered a Roman governor. But it could happen elsewhere too, in less formal settings: when litigants met each other, or met with their advisors, for example. Thus, agency, situation, and context are fundamental concerns.

This book will utilize this approach in order to build up a picture of the way in which the community that the two archives attest coped with its legal situation and used, found out about, and thought about 'the law'. This will be tackled by considering the people involved, their actions, and interactions. This differs from previous work on the documents in two respects. First, it does not aim to identify the 'operative law' of the archives as Jewish, Hellenic, Roman, or otherwise, using the parallel-hunting, systems-based method that others have typically applied. Secondly, it aims to consider the archives as wholes in a broader study of the community, rather than focusing only on individual documents or select problems of law.

In light of these aims, I shall consider in turn the various agents involved in drawing up and using the documents in order to assess the varying contributions, considerations, and influences that led to the papyri being written in the way that they were. Much of this will involve mapping out fields of possibilities—possible attitudes and mindsets, often working with comparative evidence from elsewhere in the empire. Yet at all times the particularities of this area and these people must be and will be kept in mind: this is a history of a small,

specific group of people. Indeed, in considering approaches and attitudes to law, it is vital to reflect upon what and how people thought about it. Such concentrated bodies of evidence as these two archives allow us to do just that. Yet in spite of this focus on what I have called 'localization' and specific situation, what will be made clear is that there was also a high level of connectivity, even if this was sometimes on a personal level. Locals interacted with each other and with Roman officials, sharing their own knowledge in ways that could result in either new, shared resolutions or conflicting understandings of a particular situation. Localized law is therefore also part of a larger, more connected empire.

Beginning to Reinterpret the Archives

These archives contain individual and family histories, details that we could trace in our own backgrounds: marriages, money, and quarrels. Perhaps the easiest element to track in all this is the movement of property, since these were the kinds of transactions that were deemed important enough to need a documentary record. But we can also read between the lines to discover more about the agents behind the documents.

An overview of these transactions will follow, but in outlining the histories of these families a wealth of additional information will become apparent. These are, after all, not the documents of just these two women, but family archives: ‘The Babatha Archive’ and ‘The Salome Komaise Archive’ are both—generally accepted and widely used—designations of convenience, rather than accurate descriptions. As such, the narrative spans back to previous generations, and the immediate context into which we must place the disputes and transactions is not simply one of location or legal niceties, but also of family connections. These will be laid out in this chapter, which will also tackle three case studies: the marriage contracts from both archives (P. Yadin 10, P. Yadin 18, P. Hever 65); and the two separate examples of litigation from the Babatha archive, the first concerning her dispute with the guardians of her son Jesus (P. Yadin 12–15, 27, 28–30), and the second concerning her second husband Judah’s estate after his death (P. Yadin 20, 23–6; more tangentially also P. Yadin 19 and 21–2). These encompass what have proved to be some of the most contentious issues for scholars working on these documents—for example, questions of the operative law of marriage and succession. Yet they can also be seen in terms of the decisions, understandings, and interactions of individuals who are deliberately trying to achieve their specific goals. I shall come back to this throughout the book, but

for the moment the present chapter will allow readers a brief insight into the world of these papyri.

THE TALES TOLD IN THE ARCHIVES

Babatha

There are thirty-six documents in Babatha's archive, three of which are too fragmentary to determine their contents.¹ Two more are also extremely fragmentary.² They date for the most part from 94 to 132 CE and were found wrapped up in a leather purse in the Cave of Letters.³ This means we have a unity of find that confirms the documents belong together. The papyri include sales and purchase contracts, deposits, marriage contracts, petitions, and summonses. Not all directly involved Babatha: some of the earlier papyri were probably kept by her father Shimon and passed on to his daughter in due course.

Seven of the papyri are written in Nabataean Aramaic, three in Jewish Aramaic, and the rest in Greek, though many of the Greek papyri also have subscriptions and signatures in the former two Aramaic dialects. These dialects have very different scripts: as the names suggest, Jewish Aramaic was used by Jews living in Judaea at this time, and Nabataean Aramaic in the kingdom of Nabataea.⁴ The latter also incorporates many features that we find later in Arabic. Furthermore, some of the Greek documents appear to have been translated from Latin originals: the multilingual nature of the papyri is therefore not to be underestimated.

The earliest group of documents that may belong together were written in Nabataean Aramaic and date prior to the Roman annexation, i.e. from 94 to 98 CE (P. Yadin 1–4). P. Yadin 2 and 3 relate to

¹ On the number of documents, which here includes P. Yadin 36 (= P. Starcky), see Introduction, p. 7, n. 12.

² P. Yadin 31, 32/32a and 35 are all too fragmentary to even determine their contents; P. Yadin 33 and 34 are also extremely fragmentary.

³ The exception to this is P. Yadin 36 (= P. Starcky): see Introduction, p. 7, n. 12.

⁴ For a more detailed overview of the Aramaic of Palestine and Arabia, see Gzella (2015: 225–46), who uses the designations 'Jewish Palestinian Aramaic' and 'Nabataean Aramaic' for the scripts under discussion here. I have preferred 'Nabataean Aramaic' and 'Jewish Aramaic', which are commonly employed in discussions of these documents: see, for example, Cotton (2003b).

the purchase of the same date orchard, sold within a month by the same Nabataean woman, 'Abi-ʿadan, to different purchasers.⁵ This land ultimately (through the second contract, P. Yadin 3) ended up in the hands of Babatha's father, Shimon. There had previously been something of a puzzle about why P. Yadin 1 and 4 were included in the Babatha archive: in P. Yadin 1, at least, all the parties are Nabataeans and this document seemed to have no connection whatsoever to Babatha or her family. The text of the papyrus is split into two parts: in the first, the debtor, Muqimu, acknowledges that he owes his wife, 'Amat-'Isi, 150 selas, which is to be paid back after two years; in the second, 'Amat-'Isi states that she agrees to this loan. P. Yadin 4 was listed as a possible guarantor's agreement in the 2002 publication, though is extremely fragmentary, rendering this conclusion somewhat uncertain. Philip Esler in a forthcoming publication reconstructs the possible link between all four papyri, and thus to Babatha herself, suggesting they all relate to her father's purchase of a date orchard: this is an extremely plausible solution to the inclusion of these documents.⁶ It also means that the family was careful about acquiring and retaining relevant paperwork pertaining to its property: the story, as Esler constructs it, shows Babatha's father was meticulous in obtaining all documents that were relevant to his purchase, including P. Yadin 1, 2, and 4.⁷ Thus, Babatha's care in securing and retaining paperwork may have been a learnt family trait: even before the Roman annexation, this family seems to have been careful in its legal habits.

Another connection between these four earlier documents is through the scribes. Ḥuwaru, son of 'Awatu, wrote P. Yadin 1; 'Azur, another son of 'Awatu, wrote P. Yadin 2–4. As such, we could be dealing with a scribal family who penned all of these documents.⁸ This might tell us something about scribal practices and available expertise

⁵ Comparison might be made with the cases discussed by Urbanik (2013) in late antiquity, which also document the same property being sold repeatedly. Urbanik reconstructs these as 'mock-sales', arguing that the transactions behind the papyri were in fact loans, formulated in this specific way to safeguard 'not just the repayment of the money but possibly the personal relationship of the parties involved' (2013: 169). But a plausible alternative that prevents us from needing to see P. Yadin 2 as a similar kind of 'mock-sale' will be offered by Esler (forthcoming).

⁶ Esler (forthcoming). In this reconstruction, P. Yadin 2 is taken as evidence of a sale that was later rescinded, and Shimon, Babatha's father, collected this and various other relevant deeds when he himself bought the land.

⁷ Esler (forthcoming). ⁸ Esler (forthcoming) considers this in more detail.

in the area before the Roman annexation. It should also be noted that, despite Shimon's direct involvement in one of the documents (P. Yadin 3), all are written in Nabataean Aramaic and none in Jewish Aramaic. Not only does this further attest the good relations—in business, at the very least—between Jews and Nabataeans in this area, but it also should remind us of the importance of considering the reasons for choosing a particular language. This may have been influenced by the parties involved: mainly Nabataeans led to a document in Nabataean Aramaic. The choice of scribe also may have had an effect on the diplomatics that emerged in the final contract.

Babatha's father was later to write a document giving over all his property in Maoza to his wife Miriam, daughter of Yoseph, after his death.⁹ This was carried out in a deed of gift written this time in Jewish Aramaic (P. Yadin 7, 120 CE). He was careful to stipulate that Miriam would have to remain his wife in order to claim the gift, and Babatha is guaranteed the right to live in the *horreum* if she is a widow.¹⁰ The reasons for his writing this document have been the subject of much speculation: it was suggested that Shimon wrote it after Babatha married her first husband, Jesus. Having disposed of certain orchards in a (now lost) gift to his daughter, he was then supposed to have set about providing for his wife in the event of his death (P. Yadin 7).¹¹ This was thought to shed light upon details of the operative inheritance law in this area: namely that Shimon's actions implied his wife would not automatically inherit when he died.¹²

⁹ Yaron (1992: 45), supported later by Rivlin (2005: 165), defines this as a 'gift of one in good health', Cotton (1996a: 410) (in Hebrew) as a 'gift after death', or more broadly as a 'gift in contemplation of death' (Cotton (1997a), which is the English version of the earlier Hebrew article). See Yaron (1960: 1) for a useful twofold division of these kinds of documents: a) 'a gift of property with the donor retaining usufruct for life'; b) 'a gift of property which is finally irrevocable only on the donor's death'. These categories or rough equivalents may be found, in Yaron's view, in Talmudic, Egyptian, and Roman law.

¹⁰ This right is withdrawn in the event that she remarries. This clause guaranteeing Babatha a widow's residence has a specific parallel in *t. Ketub.* 11:7, although, unlike in this document, the Toseftan passage contains no prohibitions against the daughter bringing in a second husband.

¹¹ Cotton and Greenfield (1994: 217–18).

¹² Cotton and Greenfield (1994: 220). This would not contradict Jewish law, though the features of other documents pertaining to inheritance have been thought to do just that.

Yet we might consider that there could be many motivations for writing such a deed, including uncertainty about who would enforce the ‘operative’ inheritance law after the advent of the Romans. A written document that carefully stipulated to whom Shimon wished his property to go seems a sensible precaution in the case of any uncertainty and, as is apparent from his handling of the transactions in P. Yadin 1–4, Shimon was a careful man. Additionally, despite the similarities of various features of this papyrus to Nabataean contracts, he chose to have it written in Jewish Aramaic.¹³ Greek was also eschewed, despite this being the Roman era, and indeed all signatories to this document wrote in Aramaic. There is a shift here, in linguistic terms at the very least, from Shimon’s purchase of the date orchard in P. Yadin 1–4. Presumably this is determined by those involved in each purchase, but Shimon’s own cautious practices could be a constant throughout these transactions.

The amount of property and money that we see in the other transactions in the archive are notable and attest to the relative wealth of the family. A deposit contract (P. Yadin 5)¹⁴ of a certain Joseph, son of Joseph, to his nephew, Jesus, son of Jesus—Babatha’s first husband—mentions extensive assets. Lewis suggested that Joseph and his brother may have been in business together, and that the contract was written by Joseph after his brother’s death in order to acknowledge the ‘debt’ that he now had to his brother’s heir, the younger Jesus. The ‘debt’ constituted the amount of the business assets that now belonged to the heir.¹⁵ This would mean that Babatha’s first marriage was likely to have been into a similarly wealthy stream of society. The choice of Greek for this deposit contract is an interesting one here, coming fairly early in the Roman era (110 CE) and being used between two Jews. Again, we might wonder about available expertise or whether these

¹³ See the comments in Yadin et al. (2002: 73).

¹⁴ The deposit was a flexible form of contract that came to be used for a number of transactions. Often cited among these is its use to disguise dowry payments: see BGU 1. 114 *recto*, col. i, ll. 5–13, in which a Roman prefect stated his judgment in 117 CE that ‘We know that the deposits are dowries’ (νοοῦμεν ὅτι αἱ παρακαταθήκαι προίκες εἰσιν). Both P. Yadin 5 and another Greek-language deposit in the archives, P. Yadin 17, also include a double penalty which may have been due to Roman influence (see Lewis (1989: 40); see also Taubenschlag (1955: 349–50)) or biblical precedent: Exodus 22: 4–9, cited in Lewis (1989: 40). The examples in the latter case, however, relate to theft, damage to property, and disputed ownership so they may not provide the best comparison for failure to repay a loan on demand, as occurs in P. Yadin 17 at least.

¹⁵ Lewis (1989: 35).

provincials were trying to have a care for their new situation, but the choice of language stands in stark contrast to Shimon's use of Jewish Aramaic for his own documentation ten years later. Furthermore, P. Yadin 8 (122 CE) is also written in Jewish Aramaic, and involves two sons of Shimon and the sale/purchase of a donkey and another female animal.¹⁶ The fragmentary P. Yadin 9 (122 CE), probably a sales contract, also attests to the survival of full contracts in Nabataean Aramaic in the Roman period.¹⁷ We might pause to wonder why Babatha eventually took such a different course in her own business.

Despite the longevity of native languages in these contracts, all at least include dating by Roman formulae: consular, imperial, and provincial years are all in evidence. Additionally, payments of taxes formerly made to the Nabataean monarch now go to Caesar.¹⁸ Thus, some shifts do take place in the awareness of their rulers and in how contracts were written. Even if these are thought to conform to a Nabataean/Jewish legal 'system', this has been adapted to include some reference to the new authorities. The 'system' is changing, at least in its formulaic elements, or the people involved are adapting it to suit their new situation. Some of these changes were probably inevitable, but some may have been less so, and more a matter of active choice on the part of the parties involved.

Babatha was married twice. A few of the aforementioned documents have touched upon her first husband, Jesus, who died at some point prior to 124 CE, but we now come to those pertaining to her second husband, Judah, son of Eleazar Kthousion. He is a party to a few documents before his death, the first of which is a Nabataean Aramaic agreement (P. Yadin 6, 119 CE), in which Yoḥana', son of Meshullam, agrees to act as tenant manager for lands which Judah owns. All the principals to this contract are Jews; yet the language is still Nabataean. This is despite the fact that the scribe, Yoḥana', son of

¹⁶ Yadin et al. (2002: 109) believe that Yehoseph, one of the principals in the contract (the other was his brother, whose first name does not survive), was the purchaser; Newman (2006: 332–3) reinterprets this convincingly with Yehoseph as the seller.

¹⁷ This was labelled as a waiver of claims by Yadin et al. (2002: 268) in their publication of the document, though Newman (2006: 334–5) has suggested a rereading of it as a sales contract written from the perspective of the vendor, based on a comparison with P. Yadin 8.

¹⁸ The payment of a sales tax to the Nabataean king is evidenced in P. Yadin 2, l. 15/40 and P. Yadin 3, l. 18/45–6; this is also found, with the substitution of Caesar, in P. Yadin 8, l. 9 and P. Yadin 9, l. 9.

Makkuta⁹, does seem to be capable of penning documents in the Jewish cursive Aramaic script: he is the writer of the aforementioned Jewish Aramaic P. Yadin 8. Furthermore, we know that Judah was capable of writing at least one kind of extended legal document himself, namely his marriage contract to Babatha (P. Yadin 10). This is a Jewish Aramaic contract that has often been described as an early *ketubbah*, bearing as it does resemblances to certain features of this kind of marriage document that were later laid out in the Mishnah. Yet Judah's own daughter Shelamzion would marry under a completely different kind of contract (P. Yadin 18): written in Greek, according—explicitly—to Hellenic νόμος. These marriage contracts and the controversies surrounding them deserve a more detailed examination, and so will be picked up in one of the case studies in the second part of this chapter.

We can trace various other activities on Judah's behalf, activities which have in fact often led people to believe that he was remarkably short of cash. This conclusion was fed, in part, by a loan he took out from a Roman centurion, Magonius Valens, in 124 CE (P. Yadin 11). Judah hypothecated a courtyard in Engedi, which belonged to his father but was entrusted to his care, as security for the sum of sixty denarii. This figure was initially written as forty denarii but then crossed out in the inner text and replaced with the higher sum. Lewis therefore understood this as a 'usurious squeeze', in which Judah would repay an extra twenty denarii in addition to the rate of interest specified in the papyrus. He was therefore thought to be in dire need of money to accept such terms.¹⁹ Yet there is an equivalence rate—fifteen staters, equal to sixty denarii—in the papyrus, which, as Esler has noted, is unaltered in both the inner and outer versions of the text. If the amount had been changed at the last minute, that would mean the equivalent amount in staters would have had to have been altered in the inner text, as well as the sum in denarii. It was not. As such, this appears to be a scribal slip and not a usurious squeeze of any sort: Judah took out a loan from this Roman centurion on ordinary terms of interest.²⁰ His financial situation at this time may therefore not have been quite so dire as has previously been supposed, or at least this loan cannot be taken as quite so indicative of economic

¹⁹ Lewis (1989: 41); see also Satlow's (2005: 59) verdict that Judah seems to be 'perpetually strapped for cash'.

²⁰ See Esler (2014: 5) for this observation and consequent interpretation.

straits. It is also significant that Roman soldiers were willing to lend out cash to natives in their area at, it should be observed, the standard and not exorbitant interest rates. This was a business arrangement but not an obviously exploitative one.

There were of course constraints and obligations imposed by Roman rule and we should not paint an entirely rosy picture. When Babatha registered her property with the Romans in 127 CE (P. Yadin 16), this would presumably have been a necessity if she wanted to avoid Roman reprisals: one must, after all, pay one's taxes and prove one has done so. But she also swears by the emperor's *τύχη* in this document: an act that we have no reason to believe was forced, even if it belies our expectations about what supposedly monotheist Jews would be willing to do.²¹ The effects of contact—on both Romans and ruled—should be noted at all times.

To return to Judah and his financial situation: while we have questioned his supposedly dire straits in 124 CE, he did later apparently borrow money from his wife in a loan contract written in the form of deposit (P. Yadin 17, 128 CE), just like the one that was used by Babatha's first husband and his uncle eighteen years earlier (P. Yadin 5, described on p. 29 above).²² This was for the not insignificant amount of three hundred denarii. This contract also included a *cautio*, the written record of a *stipulatio* clause, at the end:²³ 'In good faith the formal question was asked and it was agreed in reply that this is thus rightly done.'²⁴ Its use here, in four other documents in the Babatha archive and one in that of Salome Komaise are our earliest examples of *stipulatio* in an eastern province,²⁵ even

²¹ See Czajkowski (2015) on this oath.

²² See n. 14 for comments on deposit and on the double penalty. As to why a deposit was used here and not a loan, this type of contract was used quite flexibly in the East (again, see n. 14) and perhaps offered certain advantages here, as Lewis (1989: 71) suggested: most notably, that a deposit left open the date of repayment, while a loan was for a particular fixed term.

²³ This was a formal question and answer that consisted of a formal pledge; in legal terms, it was classed as a *stricti iuris* and unilateral contract. It was originally verbal in form, and consisted of a question and answer that had to correspond (for example, *spondes? spondeo.*), though this rule gradually became more relaxed. For example, languages other than Latin were permitted. See *Inst. Gai.* 3.93; D.45.1.1.6 (Ulpian, *Sabinus*, Book 48).

²⁴ P. Yadin 17, ll. 38–9: *πίσται ἐπηρωτήθη καὶ ἀνωμολογήθη [ταῦ]τα ὀψτω[ς] καλῶ [ς γ]είνεσθαι*. Also restored in l. 16.

²⁵ The other instances are found in P. Yadin 18, ll. 27–8/66–7, P. Yadin 20, ll. 16–17/40, P. Yadin 21, ll. 27–8, P. Yadin 22, ll. 29–30, and P. Hever 65, ll. 13–14.

though it came to be used widely in contracts of all kinds across the empire. What we have here is evidence of a transfer of knowledge about legal forms, but we may also question *how* peregrines came to know of such clauses, and indeed what prompted them to decide to use them in their own documentation.

Just two months later, Judah chose to give his daughter Shelamzion all his property in Engedi in another deed of gift (P. Yadin 19, 128 CE):²⁶ half to be transferred to her immediately, half when he died.²⁷ Perhaps significantly, he also offered to register the property in Shelamzion's name with the public officials—perhaps in the public archives²⁸—if she would like him to. This action can be set alongside those of Babatha's own father in P. Yadin 7. Both men use such deeds to arrange the disposition of their property after their deaths. These actions prompted a lengthy debate about the operative laws of succession, and whether such deeds were used to circumvent them.²⁹

While the exact legal framework may be undetermined, the deeds do provide a fascinating glimpse into one way that property could be transferred in this community. We do not know what might have happened without these deeds, but from their existence we can suppose they had some kind of legal and social force. But there are also differences in their formulation that are vital to note and perhaps reveal changed attitudes and realities between 120 and 128 CE. Babatha's father chose to have his deed written in Jewish Aramaic; yet Judah—capable of writing in this language—opted for a Greek

²⁶ Lewis reads $\delta\iota\alpha\theta\eta[\kappa]\eta\nu$ (l. 4) in the inner text of the papyrus: a 'will'. This does not necessarily mean that we should view the document as a testament, or indeed as 'both a deed of gift and a testament', as Murphy-O'Connor (1999: 227) described it; see Lim (2004: 366–9) on this. See Katzoff (1990) (in Hebrew), and the updated version, Katzoff (1994), for an interpretation of this document in terms of a Jewish legal framework; Rivlin (2005: 180–2) revised Katzoff's conclusions, though still interpreted the document as reflecting Jewish law.

²⁷ There is an oft-cited biblical parallel to this act in the Book of Tobit 8:21, where the bride's father gives Tobit half of his possessions immediately, and promises to him the other half after his death.

²⁸ Cotton (1998b: 169–70) interprets $\delta\iota\alpha\ \delta\eta\mu\sigma\acute{\iota}\omega\nu$ (P. Yadin 19, ll. 26–7) as referring to public archives, pointing to further references in P. Yadin 20, l. 13/35–6 and P. Yadin 24, ll. 4–6. She also suggests this may be why this deed of gift was written in Greek: so that it could be deposited in the archives.

²⁹ See Cotton and Greenfield (1994) and Cotton (1998a) for further discussion of the operative laws of inheritance: Ilan (2000) has also argued that these deeds of gift circumvent biblical law, while Rivlin (2005: 182) interprets them as being in line with Tanaitic *halakhah*. This issue will be laid out in more detail in the *Case Studies* later in this chapter: see pp. 56–7.

document. Both were written in the Roman era, so the change becomes a pressing issue. Was the choice of Greek so that the property in P. Yadin 19 could be registered in the public archives?³⁰ Yet the part of the document that gives this option seems to have been a last-minute addition,³¹ suggesting that this might not have been the original reason for the language choice. Even if it was, why was this of no concern to Babatha's father? These changes could give us telling information about available expertise at this time, the flexibility in practical terms in such contracts, or simply about available variety and lack of uniformity of opinion within the same community towards similar types of legal transactions.

While Judah was still alive, Babatha had become embroiled in a lengthy dispute with the guardians of her son Jesus from her first marriage (P. Yadin 12–15, 27, 28–30) about the level of maintenance they were paying her. After he had died, she became involved in yet another dispute, this time over items of property from Judah's estate (P. Yadin 20–6). Her opponents were the guardians of Judah's nephews. Her stepdaughter Shelamzion was also briefly involved, though the guardians appear to have dropped their claim against her fairly quickly (see P. Yadin 20). In both cases, the authority who apparently would have decided the claims was the Roman governor, and it is to his court that all sides summon their opponents and threaten recourse. It is only when there is a dispute that such an authority is invoked: these provincials, as we have seen, had functioned without him in their everyday transactions up to this point, even if the Roman presence had other, perhaps far-reaching effects on how they had conducted their legal business. But these effects do not appear at any point to be actively imposed. How, then, does the presence of the governor fit into this picture of the world of Babatha we have so far received? Was it only at crisis points that the governor had to become involved, and why would provincials choose to threaten recourse to him in their disputes?

I shall return to both of these disputes in the case studies in the second part of this chapter. For now, however, we should turn to the smaller archive of Salome Komaise.

³⁰ See Cotton (1998b: 169–70) for this suggestion.

³¹ Lewis (1989: 87).

Salome Komaise

About Salome and her family, we are less well informed. This is purely down to numbers: just eight documents have been assigned to Salome Komaise's archive in contrast to Babatha's thirty-six. There may, of course, have been more which have been lost to us or have not yet been identified as belonging to this particular family.

The earliest document is P. Hever 2 (c.100 CE), a sales contract written in Nabataean Aramaic in which a woman called Shalom sells land to a certain Š'DLY for the sum of 75 selas.³² The contract itself bears a great resemblance to P. Yadin 2 and 3, suggesting there was a standard model for Nabataean sales contracts for the regnal period. This Shalom may have been Salome Grapte, Salome Komaise's mother, meaning that, as in the Babatha archive, we have here documents belonging to several generations of a family.³³ Additionally, both this receipt and that belonging to her daughter, written in Jewish Aramaic thirty years later (P. Hever 12, 131 CE), add to our information about how women could behave in this area, even in the regnal period. Both women seem to act without a guardian,³⁴ supporting the picture from the Babatha archive where guardians appear to have been assumed only for Greek documents. Thus, the practice in the area seems to have been that women had a fairly free hand in conducting their own legal business.

Like Babatha, Salome Komaise was married twice: first to Sammouos, son of Shimon, and next to Yeshu'a, son of Menaḥem. Salome appears to have kept one document at least that probably belonged to her first husband. P. Hever 60 (125 CE) is a receipt for an amount due for dates—possibly a tax or rent receipt³⁵—in which Sammouos acts as a go-between for others.³⁶ This means he actually carried the

³² This document was published in Yardeni (2000a: 290–1) (in Hebrew), with an English translation in Yardeni (2000b: 95).

³³ This identification was made by Eshel (2002: 171), based on reading Menaḥem in l. 7. Salome Grapte's father is known to have been Menaḥem from P. Hever 63 and P. Hever 64.

³⁴ This can be compared with some of the business transactions conducted by women in the Sulpicii archive: see Jakab (2013), who suggests women could escape the necessity of a guardian's authorization if they transacted their business not in person but through a dependant (for example, a slave).

³⁵ Isaac (1994: 266) has plausibly suggested that here we have local Jews collecting taxes.

³⁶ This papyrus was initially published in Cotton (1994).

payment that was made by a Menaḥem, son of Johannes, to an anonymous son of Judah and his colleagues. Like Babatha's father and Babatha herself, Sammouos seems to have been careful: he kept a copy of this receipt in order to prove that he had truly delivered the payment in question and not run off with the money. Paperwork—and not merely verbal witnessing—seems to have therefore played an important role in this community.

Once again, we seem to be dealing with a family of some means: two census returns (P. Hever 61 and P. Hever 62, both written in 127 CE) attest the land that Salome's brother, a *-los* or *-las* son of Levi (the first part of his name is lost), and first husband Sammouos owned. The latter shared this land with his brother, though still made an individual census declaration. Was this a Roman requirement? Or the brothers' own preference? Unfortunately only the end of P. Hever 61 has survived, though this is enough for comparison with the similar census declaration from the Babatha archive (P. Yadin 16), which was written in the same year and contains the same oath formula by the emperor's *τύχη*. We also find here the first attestation of the word *χειροχρήστης* in the Greek language, where it is used to describe a person who performs the legal function of writing a subscription for someone who is illiterate.³⁷ Although the term is only used here, people perform this function frequently for illiterates in these two archives, giving us some clue to how they were able to connect with their own documents. We might pause to consider the exact role that these *ὑπογραφεῖς* played for them: did they merely write as commanded, translate, or perhaps read and check that documents fully represented the parties' wishes?

Despite having a few of his documents, we do not have the marriage contract for Salome Komaise's first marriage to Sammouos. Perhaps such a contract was unnecessary. Yet we do have that for her second (P. Hever 65, 131 CE). This is a Greek document, in which Salome appears to have been living with her husband prior to its writing, a nugget of information that has provoked much debate. But

³⁷ The term is not attested elsewhere with this particular meaning until the middle of the sixth century, in Latin documents from Ravenna. The word is, however, found earlier with a slightly different meaning. See Cotton and Yardeni (1997: 179–80) for further details.

I shall set this aside for the full discussion of the marriage contracts that will be laid out in the case studies.

While the Salome Komaise archive lacks the kind of litigation we find in that of Babatha, this does not mean there were no disputes within this family. In fact, a ‘controversy’ between Salome Komaise and her mother, Salome Grapte, seems to have taken place over an inheritance. This was, however, later resolved and in all probability without the threatened recourse to the governor’s court that we find in Babatha’s own disputes over inheritance matters. Instead, we have a document in which Salome Komaise renounces all claims to her father and brother’s estates (P. Hever 63, 127 CE).³⁸ Two years later, Grapte saw fit to transfer all her property in Maoza to her daughter in a deed of gift with immediate effect (P. Hever 64, 129 CE). We learn other details from this document: for example, Salome Grapte was married twice, like her daughter, and her second husband, Yosef, son of Simon, acts as guardian for her here.³⁹ But once again, questions are raised about disposition of property that came up in connection with those deeds of gift found in the Babatha archive. The language choice issue becomes even more of a burning question in this case. The Greek of this document is extremely bad, and seems to have been written by someone much more comfortable with the syntax of Aramaic: the editors of the document actually constructed an Aramaic Urtext in order to properly understand its contents.⁴⁰ Why, then, this language was chosen becomes a pressing issue when we know such documents could be written in Aramaic. Perhaps these people clung to a format that was familiar to them, but felt—for whatever reasons—the need to make adjustments in the light of their new rulers.

³⁸ The details of the controversy are somewhat murky. Satlow (2005: 56–7) has proposed the following: Salome’s father, Levi, died, followed by his son and sole inheritor shortly after. The property in question then passed back to his mother, Salome Grapte. Salome Komaise threatened to sue for a marital ‘gift’ she thought she deserved; this was the ‘controversy’ referred to in this document. As a result of this, Salome Grapte decided to settle with her daughter—hence P. Hever 63.

³⁹ Jewish girls could marry from twelve years and one day old (Lewis in Lewis, Katzoff, and Greenfield (1987: 231)). The frequency of second marriage and attitudes towards this would perhaps repay further study, though see already Ilan (2012a) on Babatha’s possible problems arising from being seen as a ‘killer wife’ after her multiple marriages.

⁴⁰ Cotton and Yardeni (1997: 207).

CASE STUDIES

Within this broad pattern of transactions we find in the archives, it is worth looking in greater detail at a few examples. In doing so, I shall sketch briefly the type of controversies that have characterized previous scholarship and start indicating how the ‘multi-legalism’ and ‘legal culture’ approaches differ from that taken in the past. This is meant as a beginning only, and will be developed, exemplified, and explored further throughout the rest of the book. Indeed, in the final chapter on *The Roman Officials*, two of these case studies will be explicitly returned to and reinterpreted in light of the analysis in intervening chapters.

**The Marriage Contracts (P. Yadin 10;
P. Yadin 18; P. Hever 65)**

Three marriage contracts were found in the two archives and their ‘operative law’ has proved one of the most contentious points of discussion in modern scholarship on the documents. This has typically been divided between those who wish to see the contracts as operating under ‘Jewish’ or ‘Greek’/‘Hellenic’ law, with the debate centring on a few particular details of the documents that will be outlined below.

First, the documents in question. P. Yadin 10, Babatha’s marriage contract to her second husband, Judah, son of Eleazar Kthousion, was the only one of the three written in Jewish Aramaic, and written, indeed, by one of the parties to the contract: the groom himself. The date of this papyrus is a little uncertain. It has been suggested that it was composed prior to 125 CE, since Judah acts as Babatha’s guardian in documents written that year.⁴¹ Yet it is not certain that the couple had already married by this point, since Judah is not styled as Babatha’s husband when he acts as her guardian. Practice in this varies: when the husband assumes the role of guardian for his wife, he is identified as such in P. Hever 64 (l. 5/24); however, in P. Yadin 20 (l. 6/25–7), Judah Cimber—though certainly married to Shelamzion by now—is not expressly stated to be her husband when he acts as

⁴¹ P. Yadin 14, ll. 22–3 and P. Yadin 15, ll. 31–2. Lewis (1989: 58) stated that this was a duty ‘normally performed by a woman’s husband’.

guardian. The first time Judah appears and is explicitly described as Babatha's husband is in P. Yadin 17, written on 21 February 128 CE, meaning that we can only say for certain they were married by this point. I would therefore be inclined to tentatively date the contract between October 125 CE and February 128 CE.

P. Yadin 10 is commonly described as an early example of a *ketubbah*,⁴² since many of its features correspond to the six mandatory clauses for inclusion in *ketubbot* laid out later in a passage in the Mishnah (*m. Ketub.* 4: 7–12).⁴³ The amount of the dowry payment was set out in Tyrian tetradrachms, which was compared in the initial publication with the stipulation in *y. Ketub.* 1:2 that in Palestine the *ketubbah* must be paid in the currency of the sanctuary.⁴⁴ The dowry amount—equivalent to four hundred denarii—was also thought to correspond to that set by rabbinic authorities for widows and divorcees. This has since been disproved: Babatha's dowry is in fact more than four times the minimum amount of the rabbis' regulations.⁴⁵ Finally, in the document, Judah explicitly takes Babatha as a wife, 'according to the law of Moses and the Judaeans'.⁴⁶

The other two marriage contracts appear rather different in nature. P. Yadin 18, that of Shelamzion (Judah's daughter and Babatha's stepdaughter) to her husband, Judah Cimber, was written on 5 April 128 CE, so probably not that long after Babatha's own marriage contract

⁴² The term *ketubbah* is typically used with two meanings: first, it refers to the marriage contract itself; secondly, to the money payable by the husband to the wife upon dissolution of the marriage (see Satlow (1993: 133) and *passim* on the nature of the *ketubbah* more generally). On elements that are often found in *ketubbot* contracts, see the list in Yadin, Greenfield, and Yardeni (1994: 84).

⁴³ The following are found in the papyrus in its current state: specification of the *ketubbah* (the amount that was due to the wife on termination of the marriage by death or divorce) (ll. 6–10); the promise to redeem a wife in the event that she is taken captive (ll. 10–11); a clause allowing female children to live with and be provided for by the husband (so, here, Judah) until their marriage (l. 14); the clause guaranteeing that, in the event of her husband's death, the widow may reside in her late husband's house and that his estate will provide for her maintenance (ll. 15–16).

⁴⁴ Yadin, Greenfield, and Yardeni (1994: 90, n. 44).

⁴⁵ Yadin, Greenfield, and Yardeni (1994: 77) thought that the amount of Babatha's dowry, 100 selas, confirmed that this was her second marriage, since it was believed to correspond to the rabbinic amount set for widows and divorcees (see Yadin et al. (2002: 119)). Friedman (1996: 56–61) and Safrai (1996) (in Hebrew) have both demonstrated that this argument is in error but it is not disputed that this was indeed Babatha's second marriage.

⁴⁶ P. Yadin 10, l. 5: משה ויהו[נ]דאי. See Yadin et al. (2002: 132–3) for comments on this phrase.

was composed. The differences, however, are striking. Shelamzion and Judah Cimper have a Greek-language contract, in which the former's father gives her away, an action formulated in an *ἐκδοσις* clause. This is explicitly stated to be done for her to be a wife to Judah Cimper 'according to the laws' (*κατὰ τοὺς νόμους*).⁴⁷ The dowry is then stipulated: Shelamzion has brought to the marriage the sum of two hundred denarii in the form of 'feminine adornment in silver and gold and clothing'.⁴⁸ The groom acknowledges that he has received this from Shelamzion's father and himself contributes a further three hundred denarii; all this is to be included in the dowry. He then promises to feed and clothe his wife and any future children, 'in accordance with Greek custom / law' (*ἐλληνικῶ νόμῳ*),⁴⁹ a phrase whose precise translation and meaning has proved contentious in the extreme.⁵⁰ For the moment, the important point to note is that there is some explicit reference to Greek *νόμος* at this point, whether we understand this as law, custom, or fashion.⁵¹ The dowry is secured upon all of Judah Cimper's possessions, both present and future,⁵² and he promises to redeem the contract for Shelamzion whenever she demands;⁵³ this is presumably equivalent to a promise to repay the dowry upon dissolution of the marriage.⁵⁴ If Judah Cimper refuses to do so, he is liable to repay double the amount. The contract

⁴⁷ P. Yadin 18, l. 7/39.

⁴⁸ P. Yadin 18, ll. 8–9/40–1: *κοσμίαν γυναικίαν ἐν ἀργύρῳ καὶ χρυσῶ καὶ ἱματισμῶ*.

⁴⁹ P. Yadin 18, l. 16/51. In the inner text, this is inserted above the line.

⁵⁰ Lewis, Katsoff, and Greenfield (1987: 233) translate this phrase as 'in accordance with Greek custom' (see also Lewis's (1989: 80) edition); Wasserstein (1989: 108), in discussing this phrase, refers to 'Hellenic law and/or custom', but does not give this as a direct translation: indeed, he terms the issue of translating *νόμος* an 'interesting, though elementary question' that is also 'irrelevant to our principal problem' (i.e. the operative legal framework of the deed) (at 123). Katsoff (1991: 174–6) later defended his reading 'in the Hellenic standard of living'.

⁵¹ Echoing Wasserstein (1989: 123); see n. 50 for the translation options.

⁵² The pledging of all possessions as security for the dowry finds a parallel in Demotic (though not Greek) marriage contracts from Egypt: see Cotton (2002b: 137). Among Greek marriage contracts, only this document, P. Hever 65 and P. Hever 69, a cancelled marriage contract from the Judaean desert (130 CE), have this liability clause in which the groom pledges his entire property as guarantee for the maintenance of the wife.

⁵³ The exchange clause is found in other Aramaic documents from the Judaean desert (see Lewis, Katsoff, and Greenfield 1987: 243, n. 37 for references), while the formula 'whenever she may demand it' (*ὅποτεν αὐτὸν ἀπαιτήσῃ*, P. Yadin 18, ll. 22–3/59) is familiar from other Greek papyri: see Wasserstein (1989: 115).

⁵⁴ Lewis (1989: 77).

concludes with a *stipulatio* clause, followed by the attestations of both Judahs in Jewish Aramaic.

Salome Komaise's marriage contract to Yesu'a, son of Menaḥem, bears certain similarities to this but is far from identical. Also written in Greek, P. Hever 65 is dated to 7 August 131 CE. Yesu'a, from the village of Soffathe, is stated to have agreed with his wife, Salome Komaise, to live together 'as also before this time'.⁵⁵ The couple therefore seem to have been living together prior to the writing of the contract. Komaise's dowry is stipulated at ninety-five denarii,⁵⁶ which Yesu'a confirms that he has received from her on the day that the contract was written, 'as the written evaluation of feminine adornment in sil[ver and gold and clo]thing and other feminine articles equivalent to the above-mentioned amount of money'.⁵⁷ He also undertakes to feed and clothe Komaise and any future children, 'in accordance with Greek custom and Greek manner' (νόμ[ω] [ἐλληνικῶ] καὶ ἐλλ[η]νικῶ τρόπῳ).⁵⁸ This promise, along with the dowry, is secured upon all his possessions, both present and future, and it is explicitly stated that Komaise or her representative has a resultant right of execution on his property. The document once again concludes with a *stipulatio* clause.

Such different documents have understandably provoked much discussion in modern scholarship. The two Greek contracts have proven particularly contentious, with debate focused on certain specific features. The reference to Greek νόμος in both documents is a central point here:⁵⁹ did this mean that they were both thereby placed

⁵⁵ P. Hever 65, l. 6: ὥ[ς] καὶ πρὸ τοῦτου τοῦ χρόνου.

⁵⁶ On the size of the dowry, which does not conform to the rabbinic minimum, see the brief comments by Ilan (1993: 249).

⁵⁷ P. Hever 65, ll. 8–9: τειμογ[ρ]αφίαν κοσμίας γυναικίας ἐν ᾧ ῥγύρω καὶ χρυσῶ καὶ ἰμα[τι]σμῶ καὶ ἐταίροις γυν[αι]κίοις ἀξι[οχρέαν], τοῦ ἀργυρίου.

⁵⁸ P. Hever 65, ll. 9–10. The translation and meaning of this phrase are as contentious as—and often discussed simultaneously with—ἐλληνικῶ νόμῳ at P. Yadin 18, l. 16/51 (see n. 50 for bibliography). Lewis (1989: 132) translates it as 'in accordance with Greek custom and Greek manners'; cf. Cotton and Yardeni (1997: 232), who change 'manners' to the singular. Katzoff (2005: 136) reads the phrase in the same way as the similar wording in P. Yadin 18, namely as referring to a Hellenic standard of living.

⁵⁹ On what is meant by ἐλληνικὸς νόμος, see Wasserstein (1989: 119–20), who suggested that it was 'a koine of private law arising from the amalgam of Greek and oriental institutes'. For an opposing view, see Lewis (1991: 40–1). See also nn. 50 and 58 for further comments and bibliography on the translation and meaning of the phrase in these two documents.

under Greek 'law' or 'custom'? In essence, arguments on this issue have come down to whether we believe that such phrases refer to the entire document or just to one specific clause: while Wasserstein argued for the former, Katzoff strongly advanced a reading based on the latter supposition.⁶⁰ The consequence of the latter argument is normally that the document is then believed to function under a different operative law—usually interpreted as Jewish, to the extent that Lewis then interpreted the other reference to 'laws/customs'—*κατὰ τοὺς νόμους* in P. Yadin 18 (l. 7/39)—as a reference to 'their customary, i.e. Jewish, laws.'⁶¹ I admit that this reading is not immediately apparent to me in a context where we have elements of many legal systems in evidence: not only a reference to Greek law/custom later in the document, but also a *stipulatio* clause at the end. What, then, is the basis for deciding their 'customary laws' were Jewish ones? And even if *κατὰ τοὺς νόμους* does refer to the Jewish legal 'system', does this therefore make it the operative law of the entire document, despite these other features? What is it that makes the features or substance of one law dominant over others—either in our view or, more importantly, in that of the parties involved?

The dowry sums also provoked a certain amount of debate. Although the argument that Babatha's dowry in P. Yadin 10 corresponded to the rabbinic amount for widows and divorcees has been disproved, controversy still exists about that in P. Yadin 18.⁶² Judah Cimber, the groom, here adds money to the dowry—as much as 300 denarii. This is one of the elements which Katzoff viewed as specifically Jewish, citing the Mishnaic prescription of *m. Ketub.* 6.3 as evidence of a Jewish requirement for this additional payment;⁶³ Wasserstein in contrast compared the payment with the institution found in Graeco-Egyptian marriage contracts of the *donatio ante nuptias in dotem redacta*, in which the husband contributed an extra amount that would consequently be considered as part of the

⁶⁰ Wasserstein (1989: 113, 118) affirms that 'in the contract the total situation is called Hellenic'; see also Yadin (1971: 246). Katzoff, on the other hand, in Lewis, Katzoff, and Greenfield (1987: 239–40) argues that, in P. Yadin 18, the phrase only applied to the maintenance clause (see also Oudshoorn (2007: 410), who agrees); see nn. 50 and 58 for further details of his reading of these phrases.

⁶¹ Lewis (1989: 81). Katzoff, in Lewis, Katzoff, and Greenfield (1987: 241), agrees.

⁶² For an overview of the controversy concerning this payment, see Satlow (1993: 139, n. 24).

⁶³ Lewis, Katzoff, and Greenfield (1987: 242).

dowry.⁶⁴ Both used this same clause as evidence that the document fell in line with either a Jewish operative law (Katzoff) or a broader idea of regional practice that was not specifically Jewish (Wasserstein).

Lest it seem that I am suggesting that the documents give examples of options for one kind of marriage contract written in Jewish Aramaic and one other in Greek, it is worth pointing out that the Greek contracts are not one and the same and not simply written according to an identical model. This stands in contrast to the practice for sales contracts such as P. Yadin 2, 3 and P. Hever 2, for which a standard model does seem to have been employed. The differences again serve to highlight certain problems that have been encountered in attempting to identify an operative legal framework. As noted above (p. 40) P. Yadin 18, for example, begins with an *ἐκδοσις* clause, while P. Hever 65 does not appear to (the text is fragmentary at this point):⁶⁵ the format of P. Yadin 18 is thus that the father gives away his daughter. This is strongly reminiscent of Greek marriage contracts,⁶⁶ whereas in a Jewish *ketubbah*, including in P. Yadin 10, it is the groom who takes a wife. Yet an *interpretatio Hebraica* of this format in P. Yadin 18 has also been offered: if Shelamzion was still a minor, she would not have been able to be a party to a *ketubbah*. Jewish custom, however, still allowed her to marry, as long as her father gave her away—hence the *ἐκδοσις*.⁶⁷ Whether Shelamzion was, in fact, a minor is unconfirmed,⁶⁸ making

⁶⁴ Wasserstein (1989: 114).

⁶⁵ This led Lewis (1989: 130) to reconstruct the document's text in a way that had the groom taking a wife: the main addition was of *εὐλογεῖν* in l. 4. This, he believed, made the document resemble a *ketubbah* in structure. Cotton and Yardeni (1997: 225–6) have rendered these restorations unsound, but the document still lacks the *ἐκδοσις* clause of P. Yadin 18.

⁶⁶ See Méléze-Modrzejewski (2005: 14): the father's 'giving' of the bride (in his absence, a close male relative or the woman herself could also do so) is an unchanging aspect of the 'legal substance' of Greek marriage contracts. See also Yiftach-Firanko (2005) for further information about *ἐκδοσις*.

⁶⁷ Lewis, Katsoff, and Greenfield (1987: 231). Despite Katsoff's emphatic stance that the document is fundamentally Jewish, he admits that 'the dominant diplomatics here are Greek': see Lewis, Katsoff, and Greenfield (1987: 237–40; citation from 237). See also Katsoff (1995a: 41): 'It appears, then, that the formulary of Hellenistic marriage documents was used by the drafter of this document to clothe basically Jewish notions as to what ought to be said in a marriage document.' For a contrasting interpretation, see Wasserstein (1989: 109–13).

⁶⁸ See Wasserstein (1989: 110): 'There is nothing in our document to justify, or for that matter, to make us feel the need for such an assumption. It is supported by not a single form or feature of our document nor by any fact stated in it.' Wasserstein goes

it impossible to determine whether this feature truly was evidence of Jewish operative law or a Greek legal clause.

Furthermore, in P. Hever 65, we have a reference to what has been termed (probably incorrectly) 'premarital cohabitation': the bride and groom agree to continue to live together, 'as also before this time'. This differs entirely from the phrasing in P. Yadin 18, in which we have no such reference, and has once again prompted two different interpretations. The first of these suggests this was a regional custom, similar to the Egyptian 'unwritten marriage' (*ἀγραφος γάμος*),⁶⁹ and that the pair had been living together previously in a perfectly legal and legitimate marriage without a contract—the present one was simply drawn up at a later point.⁷⁰ It is worth pointing out that we do not have contracts for either Salome's or Babatha's first marriages. We cannot place too much emphasis on this, especially since Salome Komaise's archive at least is probably extremely partial, but the point is worth noting. Perhaps it suggests a gradual move towards a preference for marriages which did employ a contract.

The alternative suggestion, preferred by Lewis and fiercely defended by Katzoff (who had in fact originally made the suggestion to Lewis),⁷¹ sought to explain the matter in terms of Jewish law: the cohabitation had taken place since the couple's betrothal, in line with Jewish practice when the bride was both an orphan and a minor.⁷² Yet even among those who situate the document firmly within the context of Jewish legal thought, there is a difference of opinion on the consequent implications of this for our understanding of Jewish law at that time. Tal Ilan, through an examination of the document and the later rabbinic sources, argues that actually 'Some men and women in Jewish society of second-century Palestine did indeed live together out of wedlock.'⁷³ The document thus was thought to further attest this (Jewish) practice.

on to lay out further objections to this interpretation. On the age of marriage of Jewish women in this era (around puberty), see Katzoff (1997) (in Hebrew).

⁶⁹ Cotton and Yardeni (1997: 227–9).

⁷⁰ Lewis (1989: 130); see also the discussion in Cotton and Yardeni (1997: 227–9). Katzoff (2005: 143–4) also offers an alternative reading: this is not a marriage certificate at all, but a dowry receipt.

⁷¹ Katzoff (2005: 134).

⁷² Katzoff (2005), *contra* rejections by both Cotton (in Cotton and Yardeni (1997: 227–9); previously Cotton (1995a: 206–7)) and Ilan (1993).

⁷³ Ilan (1993: *passim* but especially 256–62 on the rabbinic sources). Citation from Ilan (1993: 256).

Thus, when we attempt to take the traditional systems-based approach to these marriage contracts, we are typically left in a position where, although we have found many parallels with various ‘systems’, the interpretation of such clauses remains far from straightforward and can be attempted—sometimes extremely convincingly—according to the precepts laid out in more than one of them. This leads to conflicting understandings: the parties involved were, it is suggested (implicitly or explicitly), thinking either according to Jewish law, Greek law, or regional (not specifically Jewish) law/practice. The solutions are very often presented as mutually exclusive, and the nearest we come to an acknowledgment of the coexistence of different ‘systems’ is in the idea that a document may be drawn up substantively according to one body of law, but employ the diplomatics or ‘formalistic’ aspects of another. *Why* and *how* agents would choose to do so is a point that is not always adequately addressed.

What the multi-legalism approach may offer is a chance to try to reconcile these various interpretations, or at least to fit the features of these multiple legal ‘systems’ into a broader understanding of how the people involved thought about and negotiated the different options that were available to them. But, beyond this, it may give us some clues as to the practical management of legal affairs in this small community and whence these options even came.

Let us take the dowry payments as one specific example. Rather than fitting the amounts in with those laid out elsewhere, it might be helpful to consider how the dowry was evaluated. In the Greek documents, it is paid in ‘feminine adornment’ and ‘feminine articles’⁷⁴ that are equal to the sum stipulated in each case. In P. Yadin 18, it is also explicitly stated that the value of the objects was ‘appraised by mutual agreement, as they both say’.⁷⁵ Such an appraisal is not unfamiliar from the Egyptian evidence, and clothing in particular is often said to have been evaluated.⁷⁶ We may also compare this with P. Dura 30 (232 CE), which states that the property that makes up a dowry has been evaluated, ‘with suitable men as

⁷⁴ P. Yadin 18, ll. 8–9/40–1; P. Hever 65, ll. 8–9.

⁷⁵ P. Yadin 18, l. 9/41–2: διατετευμημένην ἐν ἀλλή[λ]οις, ὡς λέγουσιν οἱ ἀμφοτέρω.

⁷⁶ See, for example, BGU 4. 1050 (12–11 BCE); P. Oxy. 10. 1273 (260 CE), which both refer to the evaluation of clothing in particular. For appraisal in the Roman legal tradition, see D.23.3.10pr (Ulpian, *ad Sabinum*, Book 34); D.23.3.42 (Gaius, *ad edictum provinciale*, Book 11).

mediators'.⁷⁷ This community seems, therefore, to have followed a practice similar to that found elsewhere in the Near East and in the Roman world more generally. In the course of formulating this document, both sides came together and evaluated the items contained in the dowry, perhaps discussing and negotiating their value until they reached an agreement. We could easily suppose the same thing occurring before P. Hever 65, in which a written evaluation of the goods is mentioned. Notably, we do not have this document—would this have been included in Salome's archive or kept privately by her husband?

This is but one example. If we zoom out, we may find we can say even more about the legal lives of these families and their wider community. First, there were choices available to these people. If this seems like a statement of the obvious, it is still worth making, because we may then advance to the next question of why and how people made the choices that they did. Not much time separates the writing of all three documents: P. Yadin 10 was probably written at most six years before P. Hever 65 and only (again, at most) three years before P. Yadin 18. Judah, Babatha's second husband, not only wrote P. Yadin 10 himself, but also subscribed P. Yadin 18—he was, in other words, actively involved in the writing of both contracts. So why, for his own marriage, did he and Babatha choose to have a Jewish Aramaic, *ketubbah*-like contract, but, for his daughter, a Greek contract was employed, with reference to *ἐλληνικός νόμος*? However we end up understanding that reference, the documents chosen are noticeably different. We could perhaps attribute the different choice to the difference in the principals: perhaps Judah Cimber (we should note the Roman-sounding name), Shelamzion's husband, was more concerned with keeping up with recent fashions and wished for a Greek contract. The shift to Greek might have had a variety of motivations (to be explored further in Chapters 2 and 4) and possibly might have had something to do with a desire for easier recourse to the Romans, should something go awry. Hence, also, the inclusion of the *stipulatio* in this contract as a possible appeal to these authorities. There might also have been a generational divide in the approach to marriage. So Shelamzion and Salome Komaise both opted for Greek-style, perhaps even more 'Romanized' contracts, while Shelamzion's father and his wife Babatha

⁷⁷ P. Dura 30, l. 13: ἀνδρῶν ἱκανῶν μεσιτῶ[ν].

went for a Jewish Aramaic one. If this were so, we would be able to begin to trace changes of attitudes and practice within the town.

Additionally, how much input did Babatha, or indeed the other wives, have in the choice of the contents, style, and type of documents that were employed?⁷⁸ Babatha, at least, was fairly quick to adapt to the situation under the Romans, employing Greek documentation in her litigation and being prepared to appeal to the Roman governor. Yet, in her marriage contract, she returned to Jewish Aramaic. Was this due to her husband's influence? He wrote it, after all. But she kept it. Does all this simply indicate that people could have different attitudes to different kinds of legal documents and how they were written even within a single small community? Judah, too, after all, was prepared to engage in business employing Greek documentation (in P. Yadin 11). Maybe marriage provoked particular, singular attitudes for all involved. And when we look at the differences in the Greek documents—that Judah gives away his daughter, for example, whereas Salome's father does not—is this evidence of the attitudes within a particular family or of broader divergent traditions? Salome's father, Levi, was dead by the time P. Hever 65 was written: perhaps this explains the difference in form. But that still means that the two different formulations were possible and were thought to be both legally and socially valid in this community.

Furthermore, there are corollaries to the statement that there were different options available. For this to be the case, knowledge about these possibilities must have come to these people somehow. Nabataeans do not simply awaken one day with a workable knowledge of Greek marriage formulae. Such knowledge could simply be transferred or acquired through the writers themselves, whereby different scribes had different knowledge bases, or different templates, from which to work. Consequently, the kind of contract a couple ended up with depended in large part on the scribe they approached to write it. In order for there to be such options available, there must also have been a variety of expertise for hire in Maoza. The emphasis of the question then shifts, since it is not necessarily the parties themselves

⁷⁸ Note that Wasserstein (1989: 120–1) thought P. Yadin 18 was a secular document, and there was a *ketubbah* similar to P. Yadin 10 for Shelamzion's marriage that is now lost. This would mean that we would have to explain why the *ketubbah* was missing from the archive. I am also somewhat hesitant about the 'religious' vs. 'secular' dichotomy in an ancient context.

using or interpreting the specific clauses that have provoked so much discussion but the actual writers. Our focus must then shift too. How did people choose which scribe to employ? What factors determined such choices? Was a choice even available (it seems so)? How much input did the parties themselves truly have?

These questions cannot be answered in this brief introduction. Yet they are the type of riddles with which we should attempt to engage. By seeking to answer these kinds of questions, we might begin to understand some of the day-to-day problems encountered in simply getting one's legal business done in Maoza.

Babatha vs. Her Son's Guardians

The next two case studies are the examples of litigation in Babatha's archive. These touch on various branches of law that have been examined in great detail previously—guardianship and succession, for example—but I wish to outline them primarily as disputes involving various legal actors.

At some time before 124 CE, Babatha's first husband, Jesus, died. She was left with a son, also called Jesus. In the first half of 124 CE, the *βουλή* of Petra appointed two guardians for him: Abdoöbdas, son of Ellouthas, and John, son of Eglas. We know this because Babatha carefully preserved a copy of part of the minutes from the council meeting in Petra at which the guardians were appointed (P. Yadin 12). From this copy, we learn that the original minutes were displayed in the temple of Aphrodite at Petra; thus, these records were obviously made publicly available and people were able to commission copies, as Babatha appears to have done.⁷⁹ Jesus is described as a *Ἰουδαῖος* in this document, the only case in which any of the people in the papyri are specifically designated as such.

Later that year, Babatha petitioned the governor to complain that these men were paying an insufficient amount of maintenance to her for her son's upkeep. We have a copy of this petition in P. Yadin 13, and although the papyrus is rather fragmentary, the relevant section of the complaint is clear enough. Babatha appears to ask the governor to take steps to remedy the situation, though we are unsure exactly

⁷⁹ See Palme (2011) on the implications of this papyrus for our understanding of *βουλαί*.

what she requested: it has been plausibly suggested that she wanted the governor to fix what she considered to be a more acceptable sum for maintenance.⁸⁰

Approximately one year on, she then proceeded to summon before the governor just one of the guardians, John, son of Eglas, about the payment of her son's maintenance: this summons is recorded in P. Yadin 14, written on 11 or 12 October 125 CE. The substance of the complaint is a little clearer here than in the previous papyrus, although unfortunately the text is still fragmentary at the crucial point. Babatha summoned John, 'On account of your not having given . . . to my son, the said orphan . . . just as Abdoöbdas, son of Ellouthas, your colleague, has given by receipt'.⁸¹ It should be noted that just the one guardian is summoned in this document: this may mean that she only had a dispute with John, while Abdoöbdas was paying her a satisfactory amount.⁸² From this document alone, we might indeed conclude that John had failed to pay anything, while Abdoöbdas had given her the agreed sum, though the information in P. Yadin 15, which is better preserved, seems to contradict this.

Indeed, P. Yadin 15 was written on the same day and, unlike P. Yadin 14, involved both guardians. Babatha here once again claims that they have not paid sufficient maintenance, proportionate to the income from her son's money and property and 'commensurate in particular with a style of living which befits (?) him'.⁸³ She then refers to a previous deposition against them, in which she offered to mortgage her own property if they entrusted her son's assets to her. The rationale for this offer is her claim that she would be able to increase the level of interest from the half a denarius per hundred per month that they have contributed to one and a half denarii per hundred per month: she claims she can triple the interest. She then refers to the fact she has summoned John (in P. Yadin 14) 'for his refusal of the disbursement of the [appropriate] maintenance money'.⁸⁴

⁸⁰ Chiussi (2005: 111–12); see also Chiussi (1994: 182).

⁸¹ P. Yadin 14, ll. 26–9: διὰ τό σς μὴ δε[δωκέναι τῶ] ν[ίῳ μου ± 10 τῶ] αὐτῶ ὀρφανῶ ἔξ οὗ .[...].[...] .εστ. [...] καθάπερ δέδωκεν Ἀβδοῦβδας Ἐλλο[υ]θα ὁ κολλή[γας σου] δι' ἀποχῆς.

⁸² See Chiussi's (2005: 114) and (1994: 183) arguments on this: she sees P. Yadin 14 as opening a lawsuit directed at John alone.

⁸³ P. Yadin 15, ll. 6–7/22: καὶ μάλιστα πρὸς ὁμειλίαν ἢν εἰκου[σα] [... αὐ]τῶ.

⁸⁴ P. Yadin 15, l. 11/28: περὶ τῆς ἀπειθαρχείας ἀποδόσεως τῶν τροφίων. Lewis adds '[appropriate]' to his translation in light of the previous statements in the papyri but

We do not know how the claim was resolved, or if it even went as far as the governor's court. It does not, however, seem that the guardians took Babatha's offer: nearly seven years later, on 19 August 132 CE, Babatha acknowledged receipt of a maintenance payment from one of Jesus' guardians, Simon the hunchback (P. Yadin 27). He had replaced his father, John, son of Eglas, as guardian. The amount received is the same that Babatha once complained was insufficient, though it should be noted that this is from one guardian alone. It may be that the level of maintenance had been adjusted and both guardians were now paying two denarii a month each,⁸⁵ though, if so, this is not the deal Babatha had originally proposed.

The conduct of the case is somewhat puzzling if we focus upon the legal system under which it was conducted. The seminal article on this was written by Hannah Cotton, in which she compares the details to what we know of the law of the papyri from Egypt, Jewish law, and Roman law.⁸⁶ None of these fits precisely, though Cotton tends towards Roman law as providing the best broad framework. Indeed, there are various curiosities of procedure and substance that are worth outlining, but we should also explore the points in which the archives do provide substantial illumination into the legal workings in Maoza and its surroundings.

First, we may note that it is the *βουλή*, and indeed that of Petra, which appoints the guardians of a child in Maoza and—as far as we know—not at Babatha's prompting. We have no record of Babatha or anyone else requesting that they perform such an act. While it has been suggested that this resembles the Roman procedure of *datio tutoris* by a magistrate,⁸⁷ it is not clear why the *βουλή*, instead of the municipal magistrates, should appoint the guardians or whether this action was a result of local or Roman administrative procedures. Additionally, there has been some dispute as to whether the appointment of two guardians followed local or Roman custom.⁸⁸

Yet I would argue that, despite these uncertainties in terms of the operative law followed, the case gives us a significant amount of insight into the world of guardianship in this community—principally for minors, but also for women (P. Yadin 14 is also the

when these are taken in conjunction with the complaints in P. Yadin 14, we might pause to wonder whether John had indeed been paying any money at all.

⁸⁵ Chiussi (2005: 116); see also Chiussi (1994: 184). ⁸⁶ Cotton (1993).

⁸⁷ Cotton (1993: 95). ⁸⁸ See the Introduction, p. 13, nn. 30 and 31.

first document in the archive in which Babatha herself acts through a guardian).⁸⁹ The guardians of a Jewish boy are one Jew and one Nabataean, judging from the nomenclature at any rate. This could once again attest the mixed community in the area, or perhaps simply the insensitivity of the Petra *βουλή* on this issue. It should also be noted that the guardian with whom Babatha's dispute seems hottest is John, son of Eglas, the Jew and not the Nabataean.

It appears from this case that a mother could not be her son's guardian: this explicitly contradicts the provisions of Jewish law, which allowed a mother to act as guardian under certain circumstances, though it fits with the general tenor of Roman legal provisions.⁹⁰ Yet we should not and cannot make a blanket statement that women could not be guardians in this area, since one woman, Julia Crispina, seems to act in such a capacity in another case for Judah's nephews. Perhaps this was due to personal high status on her part, but the point is that the community could countenance such a woman acting in a guardian's capacity in certain circumstances. And yet Babatha is not her son's guardian and—although she apparently had custody of him, and thus required his maintenance to be paid to her—she did not have control of his property. Indeed, there appears to be no family relationship that we know of between the boy and his custodians. And yet Simon the hunchback takes over the guardianship of his father, perhaps suggesting the responsibility could be inherited. While none of this may fit precisely with the principles we find in certain legal systems, it gives us an impression of this institution locally at this time that is no less important in understanding the archives.

With regard to the legal principles of the case itself, it has again not been possible to identify conclusively under what legal framework Babatha makes her challenge. Indeed, it is usually easier to say how the case does not exactly fit each particular family of law. Cotton has noted that women were supposed to take an interest in their child's welfare in Roman legal discussions, and were permitted to bring a charge of untrustworthiness against a guardian, but this does not seem to be what Babatha was trying to do.⁹¹ She was trying to arrange affairs so that she was paid a higher amount from her son's property for his care: at no point does she ask for a guardian's removal for

⁸⁹ See Cotton (1997b) for an analysis of women's guardianship in these documents.

⁹⁰ See Cotton (1993: 97–100, 102).

⁹¹ Cotton (1993: 102–3, 104–5).

untrustworthiness or any other reason. The presence of P. Yadin 28–30 in the archive adds to the confusion here. These are three copies of an *actio tutelae*, written in Greek. Their relationship to the case and the reasons for their presence in the archive will be discussed at length in Chapter 3, but for now we may say that Babatha had no right to use such a Roman legal instrument, adding further layers of puzzlement when we try to fit this case into one or other body of law. Yet offers like that which Babatha made to the guardians (to hypothecate her own property in return for the administration of her son's) do appear in Roman legal texts, though these are 100 to 150 years later than the current situation.⁹² This proves neither influence nor origin in either legal system in this earlier period, but is certainly a significant point to note in the development of law.

What is abundantly clear, however, is that even when a case such as this appears to be aimed directly at the Roman governor's court, this does not mean we will then automatically be dealing with a case conducted under a Roman legal framework. Perhaps it would be judged along those lines, a subject that will form the core of the discussion in Chapter 6, but it does not mean the parties involved will only make claims in line with these rules. Even if they try to—as might have happened here, if we take into account the presence of P. Yadin 28–30—this does not mean that they will get everything 'right' from our own perspective or from those more knowledgeable about Roman law at the time. How the parties then formed their claims, the negotiations that took place leading up to the eventual planned court appearance, and the advice they received regarding their strategies thus become key issues to consider at all times.

Judah's Estate

The next time that Babatha became involved in a dispute was after the death of her second husband Judah and his brother Jesus. Each brother left behind dependants: besides Babatha, Judah was survived by his married daughter, Shelamzion, and another wife, Miriam; Jesus had two sons. The dispute took place between various members of

⁹² See Chiussi (2005: 124–9); see also Chiussi (1994: 164–75) for her earlier discussion of the juristic sources.

this family, though the exact details are a little difficult to pinpoint due to the fragmentary nature of some of the papyri.

The first conflict arose between Shelamzion and the two guardians of Judah's nephews, called Besas, son of Jesus, and Julia Crispina. We do not know the exact details, but in P. Yadin 20, written on 19 June 130 CE, the guardians concede that Shelamzion owns a courtyard in Engedi,⁹³ and even go so far as to offer to register the property with the authorities, perhaps in the public archives.⁹⁴ This, however, would only be done at Shelamzion's expense. They also promise to defend her against any counterclaim on it, this time at their own expense. What this appears to suggest is that they had previously made a claim on the courtyard on their wards' behalf: the courtyard is described in this document as having been conceded to her from the property of Eleazar Kthousion, her grandfather. Thus the guardians seem to have originally been concerned with possible irregularities in the settlement of Eleazar's estate.⁹⁵ Behind this is apparently an implication that, when Eleazar died, his property was not divided in the way that it should have been between Judah and his brother Jesus. This would have had consequences for the property Jesus' sons should then have inherited.

So much for their conflict with Shelamzion—this does not appear to have continued any further. Shelamzion must have been able to prove her claim upon the courtyard to the guardians' satisfaction. Yet their dispute with Babatha continued. A few months later, in September that year, Babatha disposed of the date crop from three orchards in Maoza that belonged to Judah, son of Kthousion. She performed this transaction in two contracts: labelled in Lewis's publication as the purchase and sale of a date crop respectively (P. Yadin 21 and 22), these were probably actually some kind of labour contract that allowed her to get the crop harvested.⁹⁶ Both these contracts the

⁹³ While Lewis (1989: 42, 83, 89) believed that this same courtyard was referred to in both P. Yadin 11 and P. Yadin 19, Cotton (1996b) has demonstrated that the courtyard in P. Yadin 20 is different from that referred to in the earlier two documents. Shelamzion's claim to the courtyard is not therefore based upon P. Yadin 19.

⁹⁴ This depends on the translation of *διὰ δομησίων* (l. 13) / *διὰ δημοσίων* (ll. 35–6): see n. 28.

⁹⁵ See Lewis (1989: 93).

⁹⁶ Isaac (1992: 75) raised the possibility that they might constitute a lease of the right to work the orchard; Lewis (1994: 246) later defended his position that these were a purchase and sale contract. Later suggestions have tended to combine the two interpretations: see especially Radzyner (2005), who saw the documents as similar to

following state explicitly that Babatha holds these orchards ‘in lieu of your/my dowry and your/my debt’.⁹⁷ This appears to refer to her right to reclaim her *ketubbah* money and possibly to the money owed to her by Judah from P. Yadin 17: Babatha decides that she therefore has the right to organize the disposal of the date crop from these orchards as she sees fit.

This was far from an uncontested move. Two months later, Besas, one of the guardians, summoned Babatha before the governor ‘in the matter of a date orchard devolving to the orphans which you hold in your possession by force’.⁹⁸ This is presumably related to one of those orchards whose crop is dealt with in P. Yadin 21 and 22, though the basis for Besas’ claim is not entirely clear. We learn a few more details in P. Yadin 24, in which Besas deposes Babatha before witnesses, though the document is unfortunately extremely fragmentary. Oddly, he here acknowledges that Judah had registered the date orchards in Maoza (note the plural here, in contrast to the singular in P. Yadin 23) in Babatha’s name ‘ἐν τῇ ἀπ[ο]γραφῇ’, a phrase which Lewis translates as ‘in the census’ but may refer to registration in the public archives.⁹⁹ Besas then mentions the right of the orphans to inherit the orchards ‘from the name of Jesus, their father’.¹⁰⁰ If we set this alongside the details in the concession to Shelamzion, this may imply that the orchards originally belonged to Eleazar, and that the fundamental tenet of Besas’ complaint here is a challenge to Judah’s legal right to them and, hence, his right to have registered them in Babatha’s name. Besas concludes by summoning Babatha to disclose by what right she holds the orchards—this is presumably actually a request for her to prove Judah’s right to register them to her in the first place—and threatens to register them in the orphans’ names if she does not do so.

the Hellenistic *καρπωνεῖα* contracts from Egypt (a mixture of a sale and a lease, with a strong emphasis on the labour element); see also Katsoff (2007) and Broshi (1992: 233–4) on these contracts.

⁹⁷ P. Yadin 21, ll. 11–12: ἀντὶ τῆς σῆς προ{ο}ικός καὶ <δ>φιλῆς; P. Yadin 22, l. 10: ἀντὶ τῆς προ{ο}ικός μου καὶ ὀφιλῆς.

⁹⁸ P. Yadin 23, ll. 5–6/16–17: χάριν κήπου φοιμικῶνος[ς] ἀνηκοντα τοῖς αὐτοῖς ὀρφαν[οῖς] ὃν βία διακρατῖς.

⁹⁹ P. Yadin 24, Frag. a, l. 5.

¹⁰⁰ P. Yadin 24, Frag. a, l. 8: ἐξ ὀνό[μα]τος Ἰησοῦ[ο]υ πατρὸς αὐτῶν; see also Frag. e, l. 17: Ἰησοῦον πατρὸς αὐτῶν.

Besas then retires from the limelight, apparently due to an illness, and in the next stage of the dispute Julia Crispina acts alone, summoning Babatha to Petra so that the governor may judge their case (P. Yadin 25). This occurs about eight months after P. Yadin 23 was written, though her claim to act ‘pursuant to the subscription of his excellency the governor’¹⁰¹ may indicate that Besas had taken the case further since P. Yadin 23 and 24.¹⁰² This would, however, mean that we are missing a copy of the relevant petition by Besas that the governor subscribed. Either Babatha did not have a copy made when it was displayed or she lost it.¹⁰³

In the same document, Babatha issues a counter-summons to appear before the governor in Rabbath-Moab. She complains that she has been falsely accused of using force—this seems to be a reference to Julia Crispina’s claim that Babatha holds the orchards ‘βία’, ‘by force’, probably a Greek rendering of the Latin concept of *vis*, common in Roman legal terminology and not always necessarily a reference to actual violence.¹⁰⁴ Such rhetorical accusations of βία were used extremely frequently in Egypt, and indeed Ann Ellis Hanson has suggested Babatha’s protests here would have looked extremely ‘unsophisticated’ to those more familiar with Greek and Roman norms.¹⁰⁵ Thus we may have here a certain lack of familiarity, either on Babatha or her scribe’s part, with such terminology, in contrast to Julia Crispina or her scribe’s apparent comfort in deploying this kind of rhetoric.¹⁰⁶ Finally, Babatha rejects the legal procedures (τὰ νόμιμα), probably of Julia Crispina’s summons (the text is

¹⁰¹ P. Yadin 25, ll. 6–7/33–4: κατὰ τὴν ὑ[πογραφ]ῇ τοῦ κρατίστου ἡγεμόνος.

¹⁰² Lewis (1989: 108).

¹⁰³ We might perhaps look back to the extremely fragmentary P. Yadin 33, a petition referring to orphans, though there is no way to confirm whether this did indeed relate to this case.

¹⁰⁴ Particularly in cases in which a party sought to recover possession of immovable property: so, for example, there were interdicts *unde vi* and *de vi armata*, which could be used to restore land to those who had been evicted by force (with certain conditions, of course): see C.8.4 and D.43.16 respectively, Frier (1985: 171–85) on the interpretation of these edicts. But a reference to *vis* did not always imply actual physical violence: for example, a praetor could forbid force being used to disrupt existing possession (*vim fieri veto*) and any such actions would be forbidden, regardless of whether they actually involved force or not.

¹⁰⁵ Hanson (2005:102).

¹⁰⁶ ‘βία’ is, however, omitted from the outer text. Lewis (1989: 112) suggests it may have been inserted into the inner text as ‘an epexegetical afterthought . . . to define more precisely the malfeasance charged’.

uncertain at this point). The latter then states she has carried out the legal formalities and reminds Babatha that she has the option of challenging the orphan's guardian (Besas) before the governor if she is unhappy with any of the proceedings. The document, containing as it does a summons, counter-summons, and reply, almost reads like a record of successive accusations rather than an actual summons.

On the same day as she was wrangling over this issue with Julia Crispina, Babatha had to deal with yet another problem that had arisen after her second husband's death, namely the claims of his other wife, Miriam. Babatha summons her before the governor in P. Yadin 26, accusing her of having seized everything in Judah's house. Miriam, in turn, refers to an earlier summons in which she ordered Babatha not to go near her and Judah's property, and states that Babatha has no claim against Judah's estate. It is a little unclear whether this reveals that polygamy was a common practice among Jews in the area.¹⁰⁷ Judah is clearly described by both Babatha and Miriam as 'my and your late husband',¹⁰⁸ though some have denied this indicates polygamy and state that we have here instead serial monogamy. Since Babatha lived in Maoza and Miriam in Engedi, I do wonder whether it is possible that the wives did not know about each other until after Judah died.

The most pressing concern here in the past has been the rights by which Jesus' sons' guardians make their claims, i.e. the operative inheritance law. This is often combined with some of the issues that arise with regard to the deeds of gift, which have already been discussed. So, for example, were such deeds of gift written to safeguard a daughter's property because she would not inherit if the father died intestate? With regards to P. Yadin 19, support for this hypothesis was found in the fact that, in P. Yadin 24, Besas challenges Babatha's right to hold a date orchard which had belonged to her husband and threatens to re-register them in the name of Judah's nephews. At least at first glance, Shelamzion there does not seem to have had any claim on her father's property; the nephews appear to have been next in line.¹⁰⁹ This was thought by some to contrast with

¹⁰⁷ See Lewis (1989: 23–4), Bowersock (1991a: 337), and Goodman (1991: 174). Katzoff (1995b) disagrees, preferring to interpret the situation as one of serial monogamy; see Lewis's (1997) response to this proposition.

¹⁰⁸ P. Yadin 26, ll. 7–8: *ἀνδρός μου καὶ σου ἀ[πογενομένου]*; cf. ll. 13–14.

¹⁰⁹ Cotton and Greenfield (1994: 219).

Jewish inheritance law, which allowed daughters to inherit from their fathers in the absence of a son.¹¹⁰ The solution to which parents turned was to dispose of their property in deeds of gifts, thus ensuring that a daughter would be provided for after their death. Yet the position is not entirely clear-cut and whether this operative inheritance law truly did contradict that which we find in Jewish sources has proved a contentious issue. Indeed, the staunchest advocate for a non-Jewish framework has now retreated somewhat from her previous stance, noting that there might be a variety of reasons to draw up such deeds of gift.¹¹¹

Some of the problems with this hypothesis have already been raised, but if we turn to this particular case we might find there is even less support. If, as has been suggested above (p. 54) the claims of the guardians were based on the fact that the estate of Eleazar was settled incorrectly, their claims against Babatha have no bearing on Shelamzion's right to inherit. The crux of the guardians' claims seems to be that Judah had no right to possess the orchards in the first place, and that they should have passed to Jesus (his brother) and so consequently would now belong to Jesus' heirs, not Judah's. As far as I can see, that does not have a bearing on whether Shelamzion would have a right to inherit from her father.

But the dispute reveals various other details about the legal culture of the community that may be of interest to us. We can fill out our picture of guardianship that we began sketching in the previous case study: Julia Crispina's title and behaviour are distinctive. Rather than being given the usual label within these archives of *ἐπίτροπος*, she is instead called an *ἐπίσκοπος*.¹¹² Unlike the other women in the Greek

¹¹⁰ Wives would not inherit their husband's property in Jewish law, though nephews did not supersede a daughter in the line of succession (see Numbers 27:8 and *m. B. Bat* 8.2 on the latter point). For an introduction to Jewish inheritance law and the place of deeds of gift within the scheme of succession, see Yaron (1992); see n. 29 for bibliography on the operative inheritance laws.

¹¹¹ Hannah Cotton argued in a series of articles (Cotton and Greenfield (1994), Cotton (1996a) (in Hebrew), (1997a)) that the inheritance law was not Jewish, though she has since retreated from this stance: see Cotton (1998a: 116–17). See n. 29 for further bibliography on this.

¹¹² See Lewis (1989: 92) and Cotton (1993: 97) for a discussion of the term. It does occur in various inscriptions from Roman Arabia and Syria, though its exact meaning is still somewhat uncertain and, in any case, may not be comparable with the sense in a legal document such as this. In these inscriptions, it is often connected with religious buildings or temples: see Grainger (1995: 186; 191) for comments and a table of the relevant inscriptions.

documents, she also acts consistently without a male guardian and indeed is able to pursue litigation against Babatha without her male co-guardian. Her name may suggest Roman citizenship, though whether this had anything to do with what seems to be a privileged legal position is uncertain. In order for it to have any impact on her ability to conduct business free from a guardian, in terms of the accepted principles of Roman law, she would also need to have had *ius trium liberorum*; Roman citizenship in and of itself would not have been enough. But we might legitimately ask if a privileged, higher-status individual such as she may have been could use that status to act in slightly unorthodox ways that would either not have occurred or not have been allowed to women of slightly lower status (even if still local elite) within the same community.¹¹³

Furthermore, both she and Besas appear to take their guardianship duties extremely seriously if they do indeed go to the lengths of tracing and challenging the settlement of Eleazar's estate as part of their obligations to their wards. This would be especially remarkable if—as in the case of Babatha's sons' guardians—they were unrelated to their wards and did not necessarily gain anything materially by managing their property. The case above would have taken time and effort to research and pursue and, even if this was outsourced to advisors, it still required the involvement of these guardians themselves to sign documentation and appear in court. Was this about feelings of duty within a community, or perhaps tied into more general perceived responsibilities of guardianship in this area? If so, it contrasts with the accusations of, if not negligence, then lack of fervour in his investments that Babatha hurls at John.

We can also glean certain details about attitudes towards ownership, possession, and registration. Babatha seems to have taken possession of the orchards that are the subject of P. Yadin 21 and 22 unilaterally and that was accepted, at least by the purchaser/sharecropper involved in this transaction, Simon, son of Jesus. In P. Yadin 22 (ll. 20–5), Babatha undertakes to protect him against any claims against the land, but this is a fairly standard formula, not necessarily indicating unease on his part. In contrast, Besas sees her as holding the land illegitimately and challenges her right to do so.

¹¹³ Ilan (1992) argued that she was in fact a Herodian princess, which might perhaps explain the liberties she appears to have been allowed to take in both acting as a guardian and conducting business without one herself.

This dispute also provides some interesting glimpses of concepts and proof of ownership in this society. Registration seems to play a key part in this: in P. Yadin 20, as part of their concession of the courtyard to Shelamzion, the guardians offer to register it in her name in the archives. Judah, her father, made a similar offer when he transferred property to her in P. Yadin 19 (ll. 26–7). Yet registration does not seem to have been considered necessary—in both cases, this is an offer only and would have incurred expense for Shelamzion in P. Yadin 20. It also does not seem to have been considered conclusive proof of ownership. Judah had registered the date orchards in dispute to Babatha, but this does not appear to have given her an undisputed right to keep them, and Besas was able to threaten to re-register them in the orphans' names in P. Yadin 24. This is an oddly contradictory attitude on Besas' part: 'Your registration will not protect you, but the act is still valuable enough that I want to register them in my wards' name instead!' Yet this act—and so probably the public archives—was perceived to have had a value. Perhaps this is a mere empty threat on Besas' part and he would never have been able to re-register the orchards so easily. But even so, it is significant that he makes it and we should note such threats and bargaining tactics as a key part of how such litigation played out. Indeed, in light of the sheer number of 'summonses' we find in this dispute, we may pause to consider whether each and every 'summons' was really followed up. Did any of this actually reach the governor or his aides? If so, which parts and what effect did that have?

CONCLUDING REMARKS

This book delves further into some of these problems by shifting the focus to agents, interactions, and perceptions. Why was a contract written in Greek? Why did litigants take their disputes to the governor's court? How did his presence affect the conduct of such disputes? Not all of these are new questions, but I suggest that fresh answers may lie in tracing the motivations, expertise, and interactions of all those agents involved in drawing up, using, and assessing the papyri. What we find are networks of knowledge and people that all had a role in determining how legal transactions and controversies played out in Roman Arabia, and how the 'law' was negotiated and even determined by the actors involved.

The Scribes

As a general rule, people did not write their own contracts. This is a truism for much of ancient society, in which literacy levels were low and the ability to write a legal document would be restricted to a relatively small circle. While it is generally acknowledged that professional scribes wrote the vast majority of the papyri in the Babatha and Salome Komaise archives, the implications of this are very often underplayed.¹ Studies of the archive scribes have tended to focus on identifying their position in contemporary society, with particular attention given to the meaning of the self-designation ‘*λιβλάριος*’ used by two of the scribes.² The writers’ status, contacts, training, and skills are certainly relevant concerns, since they inform us about the expertise the writers brought to the documents. Yet rarely, if ever, has scribal mediation been explicitly considered in discussions of the ‘operative law’ of the documents.³ The corollary of this is that the documents’ form is implicitly taken to indicate the *parties*’ intentions

¹ The information that the archives provide is often incorporated into larger studies, both of Jewish scribes and of the wider Dead Sea corpus: see Schams (1998), Tov (2004), and Wise (2015).

² See, for example, Schams (1998: 209–14) and Isaac (1992: 73–4). The term *λιβλάριος* is found in P. Yadin 15, 17, 18, 20, 21, and 22.

³ In a chapter which focused on the external aspects of the Judaeen desert documents (in particular double documents and witnesses), Cotton (2003a: 51) commented: ‘On the whole, however, we may safely assume that the diplomatics, like the legal formulae, were transmitted for generations through the scribes, and were available to all, Jews and non-Jews alike.’ This, however, was as far as she went on this subject. Oudshoorn (2007: 87) also mentions in passing the importance of the scribes’ involvement with regard to legal context. In contrast, Kelly (2011: *passim*, but especially 38–45) constantly considers the extent to which scribes influenced the language and formulae used in petitions in Egypt.

as to the legal framework under which they wished to operate. Such an assumption is not necessarily erroneous, but it is far from a given.

Indeed, in terms of ‘agency’ there is a very clear difference between that which the parties could exercise and that of their writers. The former may indicate what the bare bones of the complaint were or decide on a general strategy and then pick which personnel—including which writer—to hire in order to help them achieve their particular goals. Scribes, however, exercised their own form of agency: they could decide how best to enact their client’s strategy, which template of a contract to use, or what rhetoric and phraseology might best convince the officials to proceed. Scribal involvement consequently means that we must recognize an extra filter—an extra agency—in the construction of these papyri. It is impossible—or at least it should be—to talk straightforwardly about the parties’ intentions regarding law or the specific formulae employed in a contract without actively considering the fact that the expression of their intentions was mediated through the person who did the actual practical task of writing. This has already become a more explicit consideration in recent studies of the Egyptian papyri, particularly petitions, on which Benjamin Kelly’s remarks are worth noting:

These texts were mostly written by scribes, and these scribes worked within a scribal culture with a long-established repertoire of stock phrases and *topoi*. In most cases, it is simply impossible to tell whether we are hearing the ‘voice’ of the petitioner, or that of the scribe, or whether we are hearing an echo of discourses that were common in scribal and legal culture, and simply repeated through force of habit, without necessarily representing the innermost mentalities of either petitioner or scribe. In view of this uncertainty, anyone who wishes to identify the very ‘voice’ of the petitioner in the language of such a document—especially in formulae repeated frequently in other petitions—must discharge a heavy burden of proof.⁴

Petitions are more problematic than most genres of papyri: the petitioner aims to convince, to tell their own particular narrative about a course of events, and in doing so persuade the reader that they are in the right. His or her chosen scribe (ideally) aids them in

⁴ Kelly (2011: 38–9). See also Bryen (2013: 56–65) on this: ‘There are good reasons for thinking that there is an interactive process going on when petitions are composed, and that the interface between the scribe and the speaker is a dynamic one’ (citation at 63).

that purpose, using their experience to help fashion the narrative into one with maximum effect. Other types of documents—court transcripts, census declarations, or sales contracts—are perhaps not going to be subject to such a great process of narrative-shaping, even though they still undergo scribal transmission.

This does not mean that nothing can be said about the parties' own intentions, nor indeed that we should credit the documents in their entirety to the writers alone. A systematic identification of all stock scribal phrases, with the remainder being identified as that which is unique to the litigant's mentality, is equally problematic: this was a 'dynamic' and 'interactive process', which is not going to become any clearer simply by chopping up contracts into their constituent parts.⁵ Rather, we need to acknowledge that the scribe did have some significant input into the formulation of these documents and try to think about how and why that came about. Litigant and writer interacted, so that the end product represents a fusion of their influences, along with others who will be discussed in due course.

REASONS FOR HIRING A SCRIBE

First, a brief clarification: I shall use the term 'scribe' throughout to denote 'writer' and do not intend to imply anything about the position of these writers in their contemporary society (at least not initially). This term is not used to refer to the ספרים or the γραμματεῖς of the rabbinic texts and the New Testament, and is employed with a very restricted meaning in the following discussion.

Professional scribes were generally employed to write contracts: in ancient society, that was simply what was done.⁶ Yet it was not unheard of for people to write their own paperwork, even if it was not the norm. We have a few examples from the documentary corpus: among the Egyptian evidence, a certain Ptolemaios, son of Diodorus (mid-second century CE), seems to have drafted some of his own

⁵ See Bryen (2013: 63–4) on the problems of just identifying stock phrases; see n. 4 for the full citation concerning the process.

⁶ There was no embarrassment about illiteracy in antiquity (see Youtie (1971: 170) and Hanson (1991: 162)), making this use of scribes an expression of a general cultural attitude.

petitions;⁷ Ya'aqob, son of Shimon, wrote his own sales contract at the end of the Herodian era (P. Hever 9); within these archives Judah, Babatha's husband, wrote P. Yadin 10 himself. To these long-recognized examples, Michael Wise has added eight further possible texts from among the Judaean desert corpus that were drafted by non-professional writers, if not always the principals themselves.⁸ For our current purposes, P. Yadin 10 is particularly significant. Because there was one person who did write at least one of his own contracts, it is worth touching on the broader issue of why someone like Judah might hire any writer at all instead of doing the job himself. From there, we can then start to think about why s/he hired *that scribe in particular*.

Illiteracy

The literacy of the various actors is a vital concern if we wish to make any statements about the parties' involvement in their own legal dealings, especially the degree to which they relied on their writers. Literacy levels in the ancient world were not high.⁹ Jewish literacy, in Roman Palestine in particular, might have been even lower and that of Jewish women lower still.¹⁰ Furthermore, extended written

⁷ Ptolemaios' archive consists of eleven documents, of which Ptolemaios himself is thought to have written P. Mich. 11. 617 (a draft) (145–6 CE) and SB 20. 14401 (= P. Mich. Inv. 255) (a copy) (147 CE) (see Whitehorne (1991: 251)). See Bryen (2013: 14) for comments and further references.

⁸ Wise (2015: 321, n. 110) has suggested various other Aramaic legal texts were the products of people he terms 'lay writers', though not all parties to the contracts: P. Murabba'at 8 (receipt for troop rations) (132–5 CE), P. Murabba'at 19 (writ of divorce) (71 CE); P. Murabba'at 21 (marriage contract) (probably first century CE); P. Murabba'at 27 (deed of sale) (first or early second century CE); P. Murabba'at 34 (deed of sale (?)) (first or early second century CE); P. Hever 8 (deed of sale) (135 CE); P. Hever 8a (deed of sale) (134–5 CE); P. Hever 26 (deposit) (134–5 CE).

⁹ Harris (1989) is still probably the most comprehensive survey of literacy in the ancient world from an historical perspective, though his methodology has been critiqued and his conclusions refined extensively over the years: see, for example, the series of responses in Beard et al. (1991). Notable works since then that focus on the Roman period (the Classical Greek world has attracted rather more attention) include Bowman and Woolf (1994), Woolf (2000), and Bagnall (2012). On Jewish literacy in the Graeco-Roman era, see Hezser (2001), and Wise (2015) on the 'Bar Kokhba texts' specifically; Hezser (2001: 34–6) and Wise (2015: 20–36) contain surveys of previous literature; Poirier (2014) also gives a brief overview of education and literacy in the Galilee.

¹⁰ Wise (2015: 351–2); Hezser (2001); see also MacDonald (2005: 72–3) on male Jewish literacy.

composition was an even rarer skill than reading ability. Within these archives, Salome Komaise's brother has a *χειροχρήστης* subscribe for him in one document,¹¹ while Babatha uses an *ὑπογραφεύς* three times.¹² Additionally, she is specifically stated not to know letters (*μὴ εἰδέναι γράμματα*),¹³ a phrase frequently found in the Egyptian papyri to denote illiteracy. One other signatory in P. Yadin 15 explicitly uses another person to sign for him: Yehoḥanan, son of Aleks, whose signature in Aramaic is written 'by the hand of Yehoseph, his son'.¹⁴ In short, many of the people who were parties to contracts in these archives could not write, making it reasonable to suppose that they hired scribes to write for them for the very basic reason that they lacked this ability themselves. As a result, we might question further how much the parties actually knew about the details of their own documents.

Here, the waters begin to muddy, since 'illiteracy' is not as straightforward a designation as it first seems. Lack of writing ability, for example, does not entail lack of reading ability and vice versa. The 'illiterates' involved in the composition of these documents need not have been completely incapable of reading them, and it is possible that Babatha, Salome Komaise, and others could read the documents to a greater or lesser extent but still did not know how to write. Equally, lack of reading ability need not signify the complete absence of writing skills, and so those who could write the simple subscriptions we find in the documents were not necessarily able to read the extended legal compositions that preceded them. Indeed, it is possible that many of the signatories to the documents could sign their name but possessed no further writing skills nor any reading capability.¹⁵

¹¹ In P. Hever 61, ll. 3–4, Onainos, son of Sa'adalo, acts as *χειροχρήστης* for *-los* or *-las*, the brother of Salome Komaise. This is the first attestation of the word *χειροχρήστης* in the Greek language: see Cotton and Yardeni (1997: 144). See Cotton (1995b) on the meaning of the term and the later examples of its usage.

¹² P. Yadin 15 (in which Eleazar, son of Eleazar, acts as *ὑπογραφεύς* (ll. 34–5)), P. Yadin 16 (Judah, son of Eleazar, 'wrote for her' (*ἔγραψα ὑπὲρ αὐτῆς*) (ll. 35–6)), and P. Yadin 27 (Babelis, son of Menahem, seems to have written for her (ll. 13–14)).

¹³ P. Yadin 15, l. 35.

¹⁴ P. Yadin 15, l. 39: יהוחנן בר אלכס ביד יחוסף ברה.

¹⁵ Writing one's name does seem to have been taught as part of very elementary education: see Cribiore (2001: 167–72); see Cribiore (1996) for a more comprehensive study and a useful catalogue of school exercises. See Macdonald's (2005: 53) discussion of a modern case study of children who teach themselves to write before they are able to read; the study is documented in Chomsky (1971).

Nevertheless, there were people in this community with some writing ability beyond signing their names. Most notably, this group included Babatha's second husband, Judah, son of Eleazar, but in general the principals seem to have had no problems finding people to write for them when necessary.¹⁶ These *ὑπογραφεῖς* sometimes contributed more than just a signature, marking them as proficient in low-level composition at least. In short, while some of the people in these archives were unable to write, there were those around them who could, and who were presumably known to and, to a certain degree at least, trusted by the illiterate principals.¹⁷ These people could help keep parties informed about and involved in their documents' contents. But, of course, this did not make such people capable of writing or even understanding extended, legal contracts. A scribe would therefore have to be hired: he possessed a higher level of composition ability than the principals, perhaps with further specialized skills in the relevant area.

Another possible scenario is that the parties were able to write, but not in a particular language (this issue will be discussed further below, pp. 66–7). This interpretation would mean that the phrase *μὴ εἰδέναι γράμματα* in P. Yadin 15 did not necessarily mean that Babatha was illiterate in every language, but rather referred only to her lack of Greek language skills. While such a meaning is not unattested in the Greek papyri from Egypt,¹⁸ I am inclined to agree with Hezser's analysis of its use in this particular document: the fact that the subscriptions are very often written in Nabataean or Jewish Aramaic in these archives means that, had she wanted to, Babatha could have written in the language with which she was most comfortable.¹⁹ The

¹⁶ Four different people are attested fulfilling this role and no same person acts as *χειροχρήστης/ὑπογραφεὺς* twice (see nn. 11 and 12 for lists). Ilan (2001) posits that literates such as these used their skills to become professional witnesses.

¹⁷ Youtie (1975: 220), in a study of the Egyptian papyri, profiles the people most likely to write for illiterates. These are (in order of preference): relatives; business associates and colleagues in government service; and then professional scribes. In other words, people who were known and trusted were the first choice; cf. Wise's (2015: 40–1) comments on this facet of 'ancient pragmatism'.

¹⁸ Youtie (1971: 162) argues for this kind of restricted meaning, as does Depauw (2003: 99).

¹⁹ Babatha does, in fact, appear to sign her name in her marriage contract in Jewish Aramaic, P. Yadin 10, l. 22: 'Babatha, daughter of Simon, on her own behalf' (בבתחא בתר[ת] שמת[עון] על נפשה). This contrasts with the statement of illiteracy, should we understand it in its broadest sense of not being literate in any language. Once again, however, the explanation probably lies in levels of literacy: Babatha's ability to

phrase here therefore refers to a more general lack of writing ability, without being language-specific.²⁰

But since 'illiteracy' denotes such a range of abilities (or lack of them), it cannot be turned to as the full or sole reason for hiring a professional writer. Illiteracy alone also does not explain why one particular scribe might be hired as opposed to another, or why Judah, who appears to have been capable of the kind of extended composition that many were not,²¹ did not write more of the documentation that his family needed. But it must remain an active consideration when dealing with these documents, since literacy levels change the ways we imagine the actors dealing with their legal problems in general and their paperwork in particular. Above all, it made the involvement of literates vital.

Language

One attractive skill offered by scribes may have been the ability to write in a different language. Thus, to use the above example, while Judah could write competently in Jewish cursive, he could not do so in Greek and so would have needed to employ a scribe for any documents he or his family wanted written in languages in which they were not themselves proficient.

The reason for choosing a particular language for a contract is a complex issue. Language choice might be determined by a number of far from mutually exclusive factors, including the linguistic competence of the parties to the contracts, their relative statuses, social or cultural preconceptions about particular languages, the nature of the document involved, and, of course, the demands of the administration.²² The key factor in the use of Greek in these archives has

sign her name in Jewish Aramaic does not mean she had any writing (or reading) capabilities beyond this, even to the point of a simple subscription.

²⁰ Hezser (2001: 183).

²¹ His hand has also commonly been judged to be that of a skilled, practised writer: see Yadin, Greenfield, and Yardeni (1994: 77) and Lewis, Katzoff, and Greenfield (1987: 248), though he was 'not a professional scribe' (Yadin et al. (2002: 118)).

²² Language choice is a subject of great debate in modern sociolinguistics, which has been picked up in multilingual/bilingual studies of the ancient world. Of special relevance here is Spolsky's (1985: 44–5) set of 'preference rules', developed in relation to spoken and written languages in first-century Palestine; but see Langslow (2002: 40–1) on the difficulties of applying these. For further bibliography on multilingual

typically been connected with the latter; the desire to use these legal contracts in a Roman court encouraged people to write in Greek.²³ This does not mean that only Greek documents were enforceable in Roman courts, merely that writing them in Greek made them easier to use in this setting.²⁴ To some degree this is certainly the case, though it should not be overemphasized to the exclusion of all other factors. While the majority of the documents in the archives dated after 106 CE are in Greek, this is still a majority and not an entirety: six documents dated after 106 CE, one to as late as 131 CE, are written in either Jewish or Nabataean Aramaic.²⁵ To take two examples, P. Yadin 10 (Babatha's *ketubbah*), undated but certainly written after the creation of the Roman province, and P. Hever 12 (a receipt for dates addressed to Salome), dated to 131 CE, are both written in Jewish Aramaic. The archives provide Greek examples of the same kinds of documents: two Greek marriage certificates and various receipts. Possibly the principals were not concerned with using these two papyri in a Roman court and so did not feel any need to have them written in Greek. This then raises the question, however, of why they did feel the need to do so in other, similar kinds of documents, if indeed the reason for choosing Greek was so explicitly connected with the desire to appeal to the Roman system. Other motivating factors, therefore, need to be taken into account in each case. Whatever the reasons, there may sometimes have been considerable pressure, real or imagined, to draw up a document in a language in which the commissioning party was not proficient.

theory applied to the ancient world, see Mullen (2013), Mullen and James (2012), and Adams, Janse and Swain (2002).

²³ Though, as Oudshoorn (2007: 89) convincingly puts it, 'It seems more likely that a gradual change to Greek occurred to facilitate the use of the documents in a Roman court context, without ever excluding the use of Aramaic in legal documents completely.'

²⁴ The use of interpreters in courts in Egypt is well documented (see Youtie (1975: 205) for examples). With regard to written evidence, however, Demotic contracts had a Greek summary and description making them easier to use in court. For translation of written documents in Egypt, see the comments by Hanson (1991: 176–7), with examples of explicit references to translations of Egyptian documents from the Ptolemaic period (Hanson (1991: 177, n. 65)).

²⁵ These are P. Yadin 6–10 and P. Hever 12. The more permanent transition to Greek (with the exception of the late P. Hever 12) seems to come at some point between 122 and 124 CE: this will be discussed in more detail in Chapter 4, pp. 113–15.

Type of Document

Another explanation for someone like Judah's decision not to compose any documents aside from his marriage contract might lie in people's attitudes to particular types of contract. This applies more generally to people's decision to employ, or not to employ, a scribe. There may have been a feeling that certain documents required a more professional touch or, conversely, that it was preferable to draw up more personal contracts (such as one for a marriage) oneself: in the latter case, sentiment plays a key role. Moreover, some kinds of contracts were probably easier to write than others. Receipts could follow a much simpler format than a purchase of land, meaning that certain literates may have been happier to have a go at writing the former than they would risk composing the latter.

In theory, it seems reasonable that people had different attitudes towards different kinds of documentation. In practice, it is very difficult to marshal evidence for such a distinction, based as it is to a large degree on personal choice. To return to the example of Judah, his decision not to write any other documents in the Babatha archive besides his marriage contract might indicate that he had a sentimental attitude towards this particular kind of document alone; other kinds of paperwork were governed by a different attitude. Or perhaps he simply felt capable of writing this particular type of document: he had been married before, so could have reproduced or even just copied a previous contract, making the necessary amendments.²⁶ If Michael Satlow's estimations about Judah's lack of solvency at this point are correct, this might have been in a desperate attempt to save money, but Judah's financial straits might not have been as bad as first thought.²⁷ But in any case, what we might see as sentimentalism could have been a result of very practical considerations: the availability of suitable models or previous contracts to copy.

As we know from Chapter 1, there is in fact one other papyrus of a similar type in the same archive which could serve as comparison: his daughter Shelamzion's marriage contract to Judah Cimber (P. Yadin 18). This is written in Greek and not in Shelamzion's father's hand.

²⁶ See Wise's (2015: 321–2) discussion of the document: he argues Judah did indeed copy another text, suggesting one from a family archive.

²⁷ See comments in Chapter 1, pp. 31–2.

While Judah may well have felt some compulsion to write his own marriage contract to Babatha, apparently no such feeling emerged towards that of his daughter. Language competence is likely to have played a part here: Judah Cimber and Shelamzion probably wanted a Greek contract for reasons of their own, and so the bride's father could not compose it. For if they took no part in the decision and the language was chosen by the scribe they employed, the question re-emerges—why did Judah not write them a *ketubbah* similar to Babatha's? In this case, I would therefore argue that Shelamzion and/or Judah Cimber probably expressed a clear preference for a particular language or type of marriage document, and this preference influenced their choice of scribe at the very least, if not the instructions they gave him as well.

A further possibility is of course that the *ketubbah* was never expected to be used, and was seen as an ornamental item, a sentimental record of a personal event and not intended to be presented in a court of any kind. Essentially, it was not seen by Babatha or Judah as an effective 'legal' instrument. The primary objection to this is that Babatha does seem to have used it. She takes action in P. Yadin 21 and 22 based upon her right to her dowry money,²⁸ which appears to be a reference to the money due to her as recorded in her *ketubbah*. Perhaps we could separate the original intentions with which the document was drawn up from actual events: P. Yadin 10 was never intended to be used but, due to unforeseen circumstances, became an instrumental legal document. In antiquity, however, widows and divorced women were generally entitled to a return of their dowry money; indeed, Roman law gradually built up an elaborate system of safeguards to protect a woman's right to it. The *ketubbah* was a record of this money. Even if it was regarded as no more than a receipt, it is highly improbable that it was seen as mere decoration: this was Babatha's proof of her right to a specific amount of money upon dissolution of the marriage.²⁹ She does not have to have foreseen the legal disputes that followed Judah's death to make it difficult to

²⁸ P. Yadin 21, ll. 11–12; P. Yadin 22, l. 10.

²⁹ If Cotton is correct about the succession laws in the area not favouring women, then this would add further importance to the stipulation of the dowry and its return: it may have been the only money to which Babatha was entitled. Cotton (1998a) has, however, somewhat retreated from this stance: see the discussion of the 'operative inheritance law' in Chapter 1, pp. 56–7.

believe that she viewed her *ketubbah* as fulfilling no practical role whatsoever.

P. Yadin 10 encompasses many of the complexities of this issue, but variation in attitudes to particular kinds of documents should be kept in mind more generally. Yet there are few easy solutions or definite conclusions here. In some ways, we are left trying to second-guess very individual opinions that remain difficult to chart even in such a small, concentrated evidence base.

The Parties Involved

The use of a scribe may also have been determined by who was involved in each individual transaction. If one or other of the parties was a competent writer, or had a friend who was, then perhaps they could write some types of documents themselves: a scribe would be needless expenditure. Two issues complicate this matter. The first, once again, relates to language competency. Person A may have objected to Person B drawing up a contract in a language he could not read. Or both parties may have wished for a document to be written in a language in which they were not competent, such as that of the administration. The second is more an issue of trust. If Person A was not well acquainted with Person B and had limited literacy or was completely illiterate, it is perhaps understandable that he would be cautious about having Person B or his friend draw up a document. Person B might insert clauses to his own advantage or change the agreed terms, while Person A was not-so-blissfully unaware. In such a case, employing a neutral third party to draw up the contract would be a sensible precaution.

Official Copies

In cases where our documents are copies, especially copies connected to the Roman administrative or legal system,³⁰ the scribe is probably part of a wider administrative structure. He was employed to find and copy a person's census return or other document.

³⁰ Documents of this kind may include: P. Yadin 11, 12, 13, 16, 28–30, (possibly) 33, 34; P. Hever 61, 62.

In this case, the scribe has no influence on the substantive contents of the document, besides perhaps the language, as he merely makes a copy of an existing papyrus. The original, of course, is still subject to the same considerations about the extent of scribal influence but choice of scribe for the copy is dictated purely by considerations about his access to the relevant documentation.

Legal Expertise

After the Nabataean kingdom was incorporated into the Roman Empire in 106 CE, the inhabitants had to adjust to their new rulers and the new administrative system. In this situation, if Babatha or one of her family now wanted to sell a piece of land or take out a loan, they could have been understandably uncertain about the new procedure or, indeed, whether there even was one. In this case, the most sensible option would be to ask someone with some kind of legal expertise what they should do, or request that they draw up a document which completed the necessary transaction. In view of this uncertainty, it would seem probable that they would approach someone connected with the Roman regime who, they would assume, would be informed about their new rulers' requirements.

Such a reconstruction implies that (a) the scribes of these documents were at least perceived to have had some kind of legal expertise as well as their writing ability, and (b) that these scribes were in some way connected to the Roman administration. They might have been locals subsequently employed by the Romans or have come with the army or governor from elsewhere. If this reconstruction is correct, it would also mean such scribes would in all probability have considerable influence on the content of the documents, since their employers were trusting that they would use their supposedly specialized knowledge about their rulers to help them construct their cases most effectively.

Nevertheless, after initial contact, the people of Roman Arabia may have decided that they did not have to worry about their new rulers too much with respect to every piece of business they conducted. The existing local scribes may also have gradually become more informed about the new situation and been employed more frequently once initial worries had died down. Or the perception may have been that the only requirement or desideratum for composing new documents was that they be written in Greek, in which case any scribe who could

write the language could be employed without requiring him to have up-to-date legal knowledge. In short, opinions about the expertise required of one's writer probably varied. But perhaps we can narrow this down a bit further by considering a few of the post-106 CE scribes in a little more detail. If we can identify some of them, perhaps we can also be a bit more specific about their particular expertise.

THE IDENTITY OF THE SCRIBES

There are three key questions here: the first is whether the post-106 CE scribes were locals or newcomers who arrived with the Romans; the second is whether and how they were connected to the Roman imperial administration. Both considerations are vital if we are to reach any conclusions regarding the third: the extent of the legal expertise that these writers brought to the documents.

Locals or Newcomers?

The first question to consider is whether the post-106 CE writers of these documents were recruited from the local population or arrived as newcomers with the Romans. The situation prior to the Roman arrival has a key bearing on this, since native writers would not have appeared out of nowhere. We need to understand the existing pool of expertise, before thinking about whether these people then continued to work, adapted their practices, or disappeared entirely upon Roman annexation.

There are six documents in the two archives that are dated prior to 106 CE either definitely or tentatively: P. Yadin 36 (= P. Starcky), P. Yadin 1–4, and P. Hever 2. Of these, P. Yadin 1–4 are signed by their writers, all of whom append to their name ספרא, 'the scribe'. P. Yadin 1 (93/94 CE) is written by Ḥuwaru, son of 'Awatu, and P. Yadin 2–4 (all 97/98 CE) by 'Azur, son of 'Awatu. This information is represented in Table 2.1.³¹ Nothing further is known about these two writers, so it is impossible to determine whether they were

³¹ The information in all tables in this chapter is based on that in the publication and commentaries on the documents in Yadin et al. (2002).

Table 2.1. Identified scribes of documents written before 106 CE

Document	Date (CE)	Description	Scribe	Method of Scribal Identification	Language
P. YADIN 1	8 Elul, Year 23 of Rabbel II (93/94)	Promise to repay and acknowledgement of a loan	Huwaru, son of 'Awatu	Signature	Nabataean Aramaic
P. YADIN 2	3 Kislev, Year 28 of Rabbel II (97/98)	Sale contract	'Azur, son of 'Awatu	(Partial) Signature	Nabataean Aramaic
P. YADIN 3	2 Tebet, Year 28 of Rabbel II (97/98)	Sale contract	'Azur, son of 'Awatu	Signature	Nabataean Aramaic
P. YADIN 4	Unknown, though Year 28 of Rabbel II (97/98) is mentioned	Guarantor's agreement (?) ¹	'Azur, son of 'Awatu	(Partial) Signature and handwriting	Nabataean Aramaic

¹ This papyrus is extremely fragmentary and may not be a guarantee at all. See Esler (forthcoming) for an alternative reconstruction.

connected with the Nabataean regal administration or not.³² Philip Esler will suggest in his forthcoming monograph that they may have been part of a scribal family, since the two scribes are both sons of a certain 'Awatu; this seems eminently plausible and may tell us a little about scribal culture in the area.

The repeated presence of 'Azur might indicate an early preference for employing the same scribe again and again. The principals found someone competent, possibly a competent family, whom they trusted to write their documents and so simply returned to them whenever they needed a new contract drawn up. This hypothesis is eminently reasonable in the case of P. Yadin 2 and 3: these two documents are near identical in form, written within a month of each other, and the seller, 'Abi-'adan, is the same in each. Whatever her reasons for drawing up a new sale contract for the same piece of land, it seems perfectly natural that 'Abi-'adan would return to the scribe who had written P. Yadin 2 for her. After all, she just needed a copy of this document with minimal changes. P. Yadin 1 and 4 share no common participants (nor do they with P. Yadin 2 and 3), and very little is known as yet about the possible

³² In P. Yadin 2, Archelaus, a Nabataean commander, is the purchaser, but this provides no basis for assuming that 'Azur also occupied an official position.

relationship between the people in these documents. Consequently, we do not know if it was common practice to go back to the same scribe or just 'Abi-'adan's preference, though this seems a reasonable thing to do more generally. A particular scribe might be employed repeatedly based on a relationship of trust that had been gradually built up.

We can, in any case, safely conclude that there were scribes who wrote multiple documents of various types for people prior to 106 CE. We may also make the broad observation that there was a demand for the writing of documents (i.e. some kind of written legal culture). Competent people like 'Azur and Ḥuwatu filled this demand.

Ḥuwaru, son of 'Awatu, and 'Azur, son of 'Awatu, do not appear again in any of the papyri written after the Nabataean kingdom was converted into a Roman province. This does not, however, mean that people stopped using those scribes who had operated in the Nabataean kingdom. We have one Greek document (P. Yadin 5, dated to 110 CE) and a fragment of another (P. Yadin 31, also tentatively dated to 110 CE), but P. Yadin 6 (119 CE) is the next Aramaic document in the archives after P. Hever 2 (c. 100 CE), the last non-Greek contract before annexation. We therefore have a gap of about nineteen years between the last Aramaic document written under the Nabataean kingdom and the first that was written under the Roman administration: time enough for the people in question to retire, die, move on, or change professions. The fact that these specific names do not reappear is therefore not particularly mysterious or surprising, and certainly does not indicate that people stopped using local scribes.

On the contrary, as mentioned above (p. 67), six documents written after the creation of the Roman province were written in Nabataean or Jewish Aramaic, one as late as 131 CE. Scribes have been identified for five of these documents, based upon signatures or handwriting: this information is represented in Table 2.2.

Yohana', son of Makkuta', is identified entirely on the basis of his handwriting.³³ In none of these documents does he sign and append

³³ Yohana', son of Makkuta', has also been assumed to appear in P. Yadin 7 as a possessor of property. In fact, Yohana' is a daughter of Makkuta' in this document: [י]חנה ברת מכותא (l. 46, also restored in ll. 11–12). The editors explain this as a scribal error, noting the fact that Yohana' is 'a well-known person in the Naḥal Ḥever documents': see Yadin et al. (2002: 97). Furthermore, as they go on to note as explanation for the error, Yohana' is also a woman's name, which is attested in an ossuary from the Jerusalem area: Yadin et al. (2002: 97).

Table 2.2. Identified scribes of non-Greek documents written after 106 CE in the Babatha archive

Document	Date (CE)	Description	Scribe	Method of Scribal Identification	Language
P. YADIN 6	119	Tenancy agreement	Yohana', son of Makkuta'	Handwriting	Nabataean Aramaic
P. YADIN 7	24th Tammuz, 120	Deed of gift	An unknown son of Shimon	(Partial) Signature	Jewish Aramaic
P. YADIN 8	3rd Tammuz, 122	Sale/purchase contract (?)	Yohana', son of Makkuta'	Handwriting. The scribe's name is present but not identified explicitly as the scribe.	Jewish Aramaic
P. YADIN 9	122	Waiver or sale contract (?)	Yohana', son of Makkuta'	Handwriting. Yohana's name appears among the witnesses but is not conclusively stated to be that of the scribe.	Nabataean Aramaic
P. YADIN 10	3rd Adar, year unknown	Marriage contract	Judah, son of Eleazar Kthousion	Signature	Jewish Aramaic

ספרא to his name, as in those predating 106 CE. The association of this hand with his name is based upon an identification of the handwriting in these documents with the signatures in P. Yadin 8, P. Yadin 9, and that in one of the subscriptions to P. Yadin 22.³⁴ His hand

³⁴ P. Yadin 22, l. 34: 'Yohana', son of Makkuta', her "lord" (יִיחָנָא בֶר מַכּוּתָא אֲדוֹנָהּ). The signatures in the earlier documents seem quite fragmentary in the photographs of P. Yadin 8 and 9: both papyri are fairly perforated around the area of the signature (see Plates 33 and 56 respectively in the Plates volume of Yadin et al. (2002)). Nevertheless, the handwriting of the main body of P. Yadin 6, 8, and 9 has been matched quite definitely, and the editors, in their physical description of P. Yadin 8, seem confident in their identification: 'He [Yohana'] apparently was the scribe of this document, as indicated by the resemblance of the handwriting in his signature and in the text... The ligature of the word מִנְעֵם in line 6 exposes his identity also as the scribe of the Nabataean documents P. Yadin 6 and 9 where a similar ligature appears (despite the difference between the Aramaic and Nabataean scripts)' (Yadin et al. (2002: 111)).

is skilled and cursive.³⁵ It could very well have belonged to a professional writer, capable of the rapidity of writing which is on display. The documents may, then, still provide evidence that local scribes continued to operate under Roman rule and even that people tended to find one they trusted and employ him repeatedly. Notably, too, while P. Yadin 6 and 9 are written in Nabataean Aramaic, P. Yadin 8 is written in Jewish Aramaic. The scribe here appears to have been able to range across Aramaic scripts, perhaps maximizing his income through this skill.

These documents demonstrate that, even after the Romans arrived, there were still people who could be commissioned to write contracts in languages other than Greek. Indeed, they *were* approached to do so for about sixteen years after the province was created and occasionally even later. There was thus still a demand for documents written in Nabataean and Jewish Aramaic, meaning that it is extremely probable that local scribes continued to operate after the Roman occupation. They did not vanish from the scene, or at least did not do so immediately.

But were the scribes who continued to draw up contracts in local languages the same people who later turned their hands to Greek documents? This is not meant to refer to individuals: neither Yoḥana' nor the unknown son of Simon append their names as scribes to any of the Greek papyri. Rather, was the circle of local scribes who operated under the Nabataean rule and continued to work under the Romans also responsible for writing the Greek documents that predominate from around 124 CE? Language competence is the obvious determining factor here: if the existing scribes knew Greek and developed their writing skills in this language, then it is possible that they acted as scribes for the post-124 CE documents. Their main language of operation simply shifted to Greek. If, however, knowledge of Greek in the area was extremely limited before the Romans arrived, it might be more probable the later scribes had arrived with the new rulers.

So, how likely was it that the earlier scribes, or indeed others in the area, already knew Greek? Yoḥana's abilities in multiple Aramaic dialects have already been noted. Multilingualism, including some level of Greek, in this area does not seem a remote possibility. The

³⁵ Yadin et al. (2002: 111, 258, 269).

client kingdom of Nabataea did not exist in a vacuum. Its neighbours included Egypt and Judaea: the use of Greek in the former hardly needs comment, and the language was far from unknown in the latter.³⁶ Additionally, Strabo, in the late first century BCE, stated that Romans and many other foreigners lived in Petra.³⁷ The Hellenized architectural style which flourished under Aretas IV (c.9 BCE–c.40 CE) also attests to some sort of contact with the Graeco-Roman world and ‘the Hellenic tastes of the eastern Roman Empire’,³⁸ if not language contact specifically. Judah, Babatha’s second husband, was from Engedi in Judaea and owned property there (P. Yadin 11 and 19), yet lived in Maoza in Arabia: this attests some kind of cross-border activity. This was admittedly in the Roman period but may have been a continuance of ownership patterns developed by previous generations of his family. Nabataea might not have been directly administered by the Romans before 106 CE but this does not mean it had no contact with its neighbours.

In short, there is evidence for Greek being used around this area and a suggestion that, at least in the earlier period, Nabataea had attracted travellers. Admittedly, Maoza was a village on the south coast of the Dead Sea and can hardly be compared with the cosmopolitan capital of Petra. Nevertheless, as is explicitly shown in the documents, Babatha, Salome Komaise, and their families were wealthy. They had land and, therefore, presumably produce to trade. Judah at least travelled and owned property in Judaea. Under such conditions, some contact with the Greek language, either spoken or written, would have been probable.

Of course, this is rather different from being able to compose lengthy legal documents in Greek. But we are not talking about an overnight switch here: with the exception of P. Yadin 5 and the fragmentary P. Yadin 31, both dated to 110 CE, there was a sixteen-to eighteen-year gap between the annexation and the time when Greek appears to have become the default legal language. This provided plenty of time for locals, including scribes, to improve their

³⁶ See Hezser (2001: 237–43) for an overview of the acquisition of Greek by Jews in Roman Palestine.

³⁷ Strabo, *Geographica* 16.4.21. Strabo claims that he bases his account on the reports of his friend, Athenodorus, who had visited the city. See Introduction, pp. 4–5, especially n. 4 for comments and bibliography on Strabo, Athenodorus, and Nabataean history.

³⁸ Bowersock (1983: 61); see also Millar (1993a: 394–408).

Greek language skills. There would have been a particular economic incentive to do so for the canny local scribe who realized the long-term effect of Roman occupation. If such a scribe recognized the probability of an increasing use of Greek, it was in his interests to pick up the language or to make sure his children did so.³⁹ Others involved in trade may also have had a similar incentive, faced with a whole new set of potential customers in their Roman rulers.

A comparable situation may be found in Egypt after Alexander's conquest in 332 BCE and the subsequent period under the Ptolemies. Under the Persians, lower-level administration had been conducted in Demotic, while the highest level, in Memphis, operated in Aramaic. The latter, after Alexander's arrival, swiftly switched over to Greek, but the lower level appears to have continued to operate in Demotic for a long time. When the switch gradually occurred, this was probably at least in part through Egyptian scribes, who had previously been writing in Demotic, becoming proficient in Greek.⁴⁰ Willy Clarysse identified some of the Egyptian scribes who wrote Greek by examining the writing implements used for Greek documents. Those who were using the Egyptian rush pen to write in the Greek language were in all probability Egyptians—there was little reason for a Greek to learn to use this implement rather than his traditional tool of the *κάλαμος*, which was much more user-friendly.⁴¹ Here, then, native scribes learned to adapt and function in the new language of the administration. This admittedly occurred over a much longer period than we find in Roman Arabia, which is attested by the fact that the Greek of these Egyptian scribes is generally excellent.⁴² In contrast, that of the writers in the Babatha and

³⁹ Comparison might perhaps be made with the points raised by Meyer (2007: 63–73) on the format of the documents: namely that the inner text of double documents became fuller again at a certain point, which Meyer connects with locals adapting to Roman requirements (at 65).

⁴⁰ See Clarysse (1993: 186–8) for an overview of this process of change.

⁴¹ Clarysse (1993: 188–90). This is not the only evidence for Egyptian scribes writing in Greek: an inscription from Dendera has an Egyptian priest list his titles, among which are various Egyptian scribal posts and 'scribe of Greek writings': see Clarysse (1993: 186–8) for this and further examples. In the Ptolemaic period, two 'Egyptian' teachers are also listed for tax purposes among the Hellene group, which has led Clarysse and Thompson (2006: 127–9) to suggest that Egyptian teachers (who incidentally were the people who acted as notaries at this stage), in a climate which was now heavily promoting Greek cultural values, were utilizing their Greek skills to teach Greek as a foreign language.

⁴² Clarysse (1993: 200).

Salome Komaise archives is often littered with Semitisms that betray the mother tongue of their writers.⁴³

I would, therefore, suggest that a similar transition took place in Roman Arabia to that which occurred in Egypt centuries earlier—local scribes learned and switched languages—but in Roman Arabia it occurred at a highly accelerated pace, as reflected in the quality of the language of the local scribes. This means that the writers of the post-124 CE Greek documents were probably the existing local scribes who managed to convert a passing knowledge of Greek into a more advanced writing skill.

Connections to the Roman Administration

Is it possible that the Romans employed these locals as writers due to their language skills (i.e. in both Aramaic and Greek)? Bilinguals could have facilitated transactions between rulers and ruled and sped up what could otherwise have become lengthy and problematic transactions: one can imagine that even registering property—for a census or in local archives—could become a frustrating business without a common language to facilitate matters. But where could such scribes have slotted in?

The Roman army has previously been suggested as a possible employer.⁴⁴ The army, however, had its own *officium* of clerks on whom it could rely for official business. An inscription from across the empire in Lambaesis provides some detailed information about the grades in the *Legio III Augusta* at least: a *cornicularius* was in charge of the *officium*, with an *actarius* as deputy; there were then the *librarii* and the *exacti*.⁴⁵ These were soldiers and, as legionaries, also citizens: the posts were military (among the *immunes*) and did not constitute a separate division. Indeed, prospective centurions were typically trained in both the military and administrative side of the army, meaning that at some point in their career they would have

⁴³ These are extensive and frequently commented upon in the publications and commentary of the papyri. For a summary of some of these, see Lewis (1989: 13–6).

⁴⁴ Schams (1998: 211). Lewis (1978: 105) also suggested that Germanos and Theēnas, both scribes who use the designation *λυβλάριος* in these documents, may have been military clerks who were ‘moonlighting’.

⁴⁵ ILS 9100 (c.198–211 CE). See Phang (2007: 296–7) for a discussion of the inscription and Austin (2010: 102–9) for further details on the role of each official.

been expected to hold one of the aforementioned roles.⁴⁶ These clerks primarily operated in Greek in the eastern empire, though were probably taught Latin.⁴⁷ But the fact remains that, for internal army business, the administrative structure was built in: the Roman army does not appear to have had a need to hire outsiders when they had their own people to do the job.

The situation might be slightly different with regards to the Roman governor, though there was not necessarily a sharp divide between his staff and that of the army: the latter might also be used for administrative purposes.⁴⁸ But in the governor's court activities there might have been a greater need for bilinguals who could speak and/or write the local language(s), in this case Aramaic, and speak or write a language understandable to the administration—Greek. In some sense, this was the locals' problem to overcome if they wished to have recourse to the governor's court. Nevertheless, translators seem to have been used in courts in Egypt. Their involvement did not even attract comment, perhaps suggesting it had become a matter of routine.⁴⁹ These two archives also throw up plenty of evidence of written translation practice, with many of the subscriptions specifically marked as such.⁵⁰ This attests the presence of people skilled (to varying degrees) in at least two languages. It does not seem implausible that the Roman administration may have sourced at least some of these people from the local population.

⁴⁶ Breeze (1974: 270).

⁴⁷ See Phang (2007: 300): among auxiliaries, literacy levels were, however, likely to be lower.

⁴⁸ See Alston (1998: 257). A pertinent example here is Julius Apollinaris, who served in Arabia and wrote to his father in 107 CE (P. Mich. 8. 466; see also P. Mich. 8. 465): he had asked to be made the governor's *λιβράριος*, and was made *'λιβράριος . . . λεγεῶνος'* ('*librarius* of the legion') instead (*recto*, ll. 24–30). In the editors' words: 'the distinction between his staff as governor and staff as military commander might not be too finely drawn' (Youtie and Winter (1951: 13)). Soldiers on detached duty of this nature were something known as *beneficiarii*, on which, see Nelis-Clément (2000).

⁴⁹ Two examples in which translators/interpreters appear in court cases are P. Oxy. 2. 237, col. vii, ll. 37–8, dated to 186 CE and P. Col. 7. 175, ll. 56–67, dated to 339 CE, admittedly much later than the period currently under discussion. For further examples of translations and a discussion of Demotic Greek translation practice in Egypt, see Mairs (forthcoming).

⁵⁰ P. Yadin 11 includes a Greek translation of Judah's attestation (ll. 29–30); in P. Yadin 16, Babatha's attestation and the prefect's notation are both marked as translations (ll. 33–8); P. Yadin 27 includes both Babatha's attestation in Jewish Aramaic (ll. 11–14) and its translation into Greek (ll. 15–18); all that remains of P. Hever 61 is three translated attestations.

But how should we define their connection with the Romans? Did these locals become part of the administrative structure, or was the relationship between the Romans and locals more fluid? In this, two scribes from the Babatha archive serve as particularly good case studies: Germanos and Theēnas. These two wrote the majority of the Greek documents in the archive, and frequently sign their names with the word *λιβλάριος* appended. The meaning of this word is a key factor in the wider interpretation of the Roman—local scribe relationship.

So, the first possibility is that touched on above: these two had been recruited into the Roman army and were serving in the role of military *librarii*. This would require us to follow Lewis, Isaac, and Schams in reading *λιβλάριος* as a Greek rendering of *librarius*.⁵¹ Germanos' Latin name might tell in favour of this proposition, though this is highly speculative.⁵² Considering the kind of documents they wrote, we would have to posit that Germanos and Theēnas—in this interpretation—were army recruits seconded to the governor's office for administrative duties.

There are two possible problems with this hypothesis. First, the presence of Jews, identifiable by their patronyms (Judah and Simon respectively), amongst the soldiers of the Roman army might be surprising.⁵³ Secondly, as Isaac has already observed, these instances of (supposed) military *librarii* contrast with existing documentation of this rank, in which a military *librarius* was closely associated with, and mentioned with, his unit or office.⁵⁴ No unit or office is mentioned anywhere in these documents, making it unlikely that these two scribes were soldiers in the Roman army.

Furthermore, Bowersock has cast doubt upon the equation of *λιβλάριος* with *librarius*, preferring instead to read it as *libellarius*.⁵⁵ As support for this, he notes the attestation of *λίβελλος* with the meaning 'document' or 'petition' from the Hadrianic age, and the

⁵¹ Lewis (1989: 64); Isaac (1992: 73–4); Schams (1998: 211).

⁵² Nomenclature helps little here. Germanos is the only Jew with this name attested in Palestine in the period 330 BCE–200 CE by Ilan (2002: 332), though there are five known individuals with the name Germanos in the following period (200 CE–650 CE): Ilan (2012b: 275).

⁵³ Schoenfeld (2006) has marshalled evidence that Jews were more active in the Roman army than modern scholarship tends to assume, meaning that this possibility should perhaps not be ruled out.

⁵⁴ Isaac (1992: 73).

⁵⁵ Bowersock (1991a: 339).

existence of *libellarius* in Latin. The weakness in his argument is that the latter is only attested much later, a fact he acknowledges, though he argues that ‘words often have a functional life long before they appear in literature’.⁵⁶ This case might be strengthened from the appearance of another word in these two archives used in a sense otherwise unattested until the sixth century CE: *χειροχρήστης*.⁵⁷ A *λιβλάριος*, then, might simply have been a notary or scribe of some kind and not synonymous with a military *librarius* and, indeed, *librarius* is used in a non-military context to refer to ‘commercial copyists of formal documents’.⁵⁸ There is, therefore, no need to read these documents as referring to an army clerk, even if we do choose to read *λιβλάριος* as *librarius*. But we might also wonder why this designation was included in some documents and not others. If this was a term for Theēnas’ and Germanos’ occupation, an official title of some sort, why not append it to all the documents they wrote? Why the variation?

The following hypothesis might provide a possible explanation. These two scribes were employed not by the army but on some other arm of the Roman administration, possibly the governor’s staff or in the local archival office.⁵⁹ A *λιβλάριος* was some kind of notary or scribe employed by the Roman government, though not recruited into the army. He was probably employed both due to writing skill and linguistic ability: thus, it would be perfectly plausible that locals who had previously worked as scribes (as outlined above, pp. 72–9) and had some Greek language skills would have taken up such roles.⁶⁰ In view of the kind of official documents they produced, which include many summonses or depositions, it seems plausible that they were connected to either the governor’s administration in his legal duties or perhaps the public archives.

⁵⁶ Bowersock (1991a: 339).

⁵⁷ P. Hever 61, l. 4. See Cotton’s comments on the use of the term in Cotton and Yardeni (1997: 144–5).

⁵⁸ See Isaac (1992: 73) and Austin (2010: 105) on the *librarius* in the civil sphere as ‘a private secretary, or, as his title indicates, a copyist (or seller) of books’. *Librariae* were also found in private households: see Cancelas (2014: 177–82).

⁵⁹ This is, in fact, Isaac’s (1992: 74) rejected alternative; he prefers instead to see them as ‘officially recognized scribes and copyists catering to the needs of local property owners’.

⁶⁰ See Schams’s (1998: 211) observations that these writers were taken on ‘as bi- or multi-lingual scribes due to fluency in Nabataean and/or Aramaic,’ and ‘already possessed professional writing skills’.

A *λιβλάριος* could, then, have been an official title, if not an army rank. It is perhaps notable that, for the most part, these two scribes do not use the title in documents which specifically refer to the governor and his court—for ease of reference, ‘official’ documents. In contrast, documents which make no explicit reference to either, ones which were perhaps drawn up in a more ‘independent’ capacity by the scribes, are those in which they do include the designation *λιβλάριος*. Information on the documents written by Theēnas and Germanos, including when they appended *λιβλάριος* to their names, is included in Table 2.3.

There are two possible exceptions: P. Yadin 20 and 27. The former is an acknowledgement of Shelamzion’s right to certain property by the guardians of Judah’s brother’s orphans and is therefore strongly connected with the ongoing disputes before the governor over the late Judah’s property. Germanos signs it with the title *λιβλάριος*. Although the guardians offer to register the property in question with the public authorities, there is no suggestion that this document was specifically intended for the governor’s (or, more realistically, his staff’s) eyes; it is a private, though no less legal, acknowledgement of rights. I would, therefore, suggest it fits the suggested schema, and these two scribes do not include the designation *λιβλάριος* when writing ‘official’ documents intended for the governor’s court.

The second case is slightly more problematic. P. Yadin 27 is an acknowledgement by Babatha of the receipt of maintenance from one of her son’s guardians, Simon the hunchback. Germanos signs it, though not as *λιβλάριος*. The guardian had been appointed by the council of Petra, so we might posit some ‘official’ function to this document. It is, however, admittedly a less certain designation than those here assigned to other ‘official’ documents—i.e. those destined specifically for the sphere of the governor’s court—and poses a possible exception to the proposed pattern.

This exception notwithstanding, we might consider the following situation with regards to the appearance of the *λιβλάριος* title in the documents: the scribes working in the governor’s administration, as outlined above, also drew up documents for locals in a more independent capacity. When they did so, they appended their Latinesque title, *λιβλάριος*, to the documents as a prestige marker. In documents specifically and directly intended to be used in the governor’s court, the title was not used: if of low rank, it endowed no prestige in this context and, if their job was to draw up such documents,

Table 2.3. Identified scribes of Greek documents written after 106 CE in the Babatha archive

Document	Date (CE)	Description	Scribe	Method of Scribal Identification	Scribe's Title
P. YADIN 13	Second half of 124	Copy of a petition to the Roman governor	Theēnas, son of Simon	Handwriting	None
P. YADIN 14	11th or 12th October 125	Babatha summons John, son of Eglas, to appear in the governor's court in Petra	Theēnas, son of Simon	Handwriting	None
P. YADIN 15	11th or 12th October 125	Babatha deposes both of Jesus' guardians	Theēnas, son of Simon	Scribal signature	λιβλάριος
P. YADIN 17	21st February 128	Loan (in form of deposit) of money from Babatha to Judah	Theēnas, son of Simon	Scribal signature	λιβλάριος
P. YADIN 18	5th April 128	Shelamzion's marriage contract	Theēnas, son of Simon	Scribal signature	λιβλάριος
P. YADIN 19	16th April 128	Deed of gift, from Judah to Shelamzion	An unknown son of Simon ¹	(Partial) scribal signature	None
P. YADIN 20	19th June 130	The guardians of Judah's brother's orphans concede Shelamzion's right to property in Engedi.	Germanos	Scribal signature	λιβλάριος
P. YADIN 21	11th September 130	Purchase of a date crop or a labour contract	Germanos	Scribal signature	λιβλάριος
P. YADIN 22	11th September 130	Sale of a date crop or a labour contract	Germanos	Scribal signature	λιβλάριος
P. YADIN 23	17th November 130	Babatha is summoned before the governor by Besas.	Germanos, son of Judah	Scribal signature	None
P. YADIN 24	Uncertain	Babatha is deposed by Besas.	Germanos, son of Judah	Handwriting	None
P. YADIN 25	9th July 131	Babatha is summoned by Julia Crispina and issues a counter-summons.	Germanos, son of Judah	Scribal signature (mostly surviving)	None

P. YADIN 26	9th July 131	Babatha summons Miriam before the governor.	Germanos, son of Judah	Scribal signature	None
P. YADIN 34	c. July 131	Very fragmentary. May be a copy of a document submitted to the governor.	Germanos, son of Judah	Handwriting	None (but the document is extremely fragmentary)
P. YADIN 27	19th August 132	Babatha acknowledges receipt of maintenance.	Germanos, son of Judah	Scribal signature	None
P. YADIN 32	Uncertain	Possibly a contract of some sort. The text is too fragmentary to make any assertions.	Theēnas, son of Simon	Handwriting	None (but the document is extremely fragmentary)

¹ This is unlikely to be Theēnas, as both the handwriting and Greek language differ significantly from his work: see Lewis (1989: 83).

their ‘official’ position was a given—they did not need to state it. It was assumed that some official had drawn up the document in question.

This does not, of course, rule out the possibility that there were also scribes working completely independently of the Roman administration, who may even have written in Greek. I would, however, suggest that people with a more ‘official’ connection, as it has been suggested that these two had, would have been preferred by locals when their legal business dealt directly with the governor’s court, since their position would endow them with a certain amount of authority. They worked for the Romans, so were expected to have a better idea of what was required.

Legal Experts or Mere Hired Hands?

Nothing in the foregoing analysis or in the documents themselves suggests that Germanos, Theēnas, or people like them were originally hired by the Romans for their legal expertise. Through their work, however, they would have grown increasingly familiar with Roman legal forms and terminology. This would not have made them legal experts from the very beginning, and indeed the scribes in the archives never use designations that indicate legal skills.⁶¹ It would, however, have made it perfectly possible, even probable, that they brought such new terms and forms to any contracts they wrote, even those they drew up ‘independently’ for locals in business unconnected with the governor’s court; one instance might be the *stipulatio* clause that appears in Shelamzion’s marriage contract (P. Yadin 18, ll. 66–7). They thus could have brought the new forms and vocabulary that they encountered in their ‘official’ work to any contracts they composed.

While this did not make these writers legal experts in Roman, local, Jewish, or any other kind of law, they may of course have gradually become more knowledgeable, the longer they worked in such roles. For those writers employed on an arm of the Roman administration, they also may have had access to templates for certain contracts that they could copy or to other people more knowledgeable than

⁶¹ On translators making such claims, see Mairs (forthcoming). In two slightly later examples from Egypt, each translator explicitly claims to be a νομικός Ρωμαϊκός: see BGU 1. 326, col. ii, ll. 22–3 (194 CE) and SB 6. 9298, ll. 24–9 (249 CE). No one uses any such designations in these archives.

themselves. In other words, their expertise may have increased as they continued in the job, and would have been combined with any previous knowledge they had possessed if they had previously worked as Aramaic language writers.

The locals' perception of their expertise may also have differed from the reality. The writers' connection with the Roman administration could have given them greater authority in matters connected to it—they were assumed to have better knowledge of what was required regardless of whether or not they really did. So when Besas wanted to depose Babatha, for example, he would naturally approach someone connected with the Romans to draw up the required document (P. Yadin 23). They were perceived to have been familiar with the language and forms that were needed in this situation and would be the natural choice for an uncertain petitioner. Thus, they were thought to have some legal expertise even if this was not necessarily the case. This perception may have carried over into documents which did not directly pertain to the governor's activities: thus, these scribes would be approached to draw up documents 'on the side' because it was assumed that they knew what they were doing. Their position gave a certain degree of authority, even if they were not necessarily particularly knowledgeable in legal matters.

But what is most striking from considering the scribal culture we find in these documents is the amount of faith illiterate litigants would have to have placed in their scribes and in the other literates around them. When we factor in the illiteracy of the principals, and the multilingual situation in the province, it becomes vividly apparent that these documents are collaborative endeavours that are the result of a combination of actors' wills and expertise. We ignore this collaboration at our peril. Scribal agency in the operation of law in this area is a significant factor, as significant—even if expressed in different ways—as that of the parties themselves.

Legal Advisors

In the modern world, seeking legal advice has been likened to buying ‘a sophisticated prediction by a professional concerning how judges in a local jurisdiction will probably apply vague legal standards to the circumstances of a particular case’.¹ In some ways, litigants were not expecting such a different service in antiquity (in theory at least). In Babatha and Salome Komaise’s cases, some degree of confusion about their legal rights in one or more of the apparently coexisting legal ‘systems’ would not be at all surprising. Furthermore, with regard to their options in a Roman court, these women would be dealing with a ruling power and its representative (the governor) who were both remote—to varying extents—and somewhat unfamiliar. When we add to this their probable illiteracy, ‘vague legal standards’ would seem a fairly accurate description of the litigants’ perspective on their situation.

Moreover, it was not just the litigants who may have needed information or advice about law and procedure in the area. The very man who was in charge of dispensing provincial justice in the Roman period—the governor—often required this too. Romans had a tendency to consider, at the very least, the local customs and traditions in any proceedings in their legal fora.² While an official who had been in the post for a while might have become relatively well acquainted with these, a new governor, recently arrived and perhaps not expecting to stay for long, would have had little or no knowledge of local practice. Some kind of legal information—either

¹ Galanter (1981: 5, n. 5), citing what would be published as Mnookin and Kornhauser (1979).

² This will be dealt with in more detail in Chapter 6.

from literature or knowledgeable people—would have been a necessity.

Yet there is no direct mention of any kind of legal advisors in these papyri. While scribes such as Theēnas and Germanos sign their names, no individual uses a title like νομικός or πραγματικός that might indicate his legal expertise. Are they, then, really entirely absent from this community or can we detect their presence and even influence in spite of the lack of direct attestation?³ What kinds of legal advice did parties have access to? Was this confined to the knowledge—or lack of it—of those people they employed to write their contracts, or was there a broader pool of legal advisors and expertise upon which they could draw?

LEGAL ADVISORS IN THE ANCIENT WORLD

The people who are termed ‘legal advisors’, ‘practitioners’, or ‘experts’ were probably not in any sense a coherent, unified, professional group in this period of antiquity and indeed the terminology used to refer to such people is fairly wide-ranging.⁴ In modern discussions, a distinction is usually made between those who were skilled in or knew their law, *iuris consulti*, and those who acted as advocates in courtrooms, and it should be duly noted that this distinction is not without basis in the sources themselves.⁵ For the former, the designations used in the Greek sources are typically πραγματικός or νομικός;⁶ the most common term in the epigraphic and papyrological record is the second,

³ Jones (2007: 1340–1) briefly considered the possibility of the involvement of jurists in Babatha’s affairs.

⁴ It is not my purpose here to enter into the debate about whether we may speak of a legal ‘profession’ in antiquity: see, *inter plurima alia*, Crook (1995: 37–8, 41, 44) and Peachin (1996: 40–2).

⁵ See Tuori (2010: 45–8) for a brief overview.

⁶ See Crook (1995: 146–58) for a survey of the Greek and Latin terms. Nörr (1965) is an old but still very useful overview, nominally of πραγματικοί, but which encompasses evidence for lower-level legal operators more generally (references to older literature may be found here); see also Robert (1960: 416, n. 1). Kunkel (1967: 267–9) provides a list of attested νομικοί; see Jones (2007: 1346–58) for a more recent inventory. Kantor (2009: 262, n. 58) gives bibliography for the inscriptional evidence for νομικοί in Asia Minor; see also Kantor (2013a: 145–52) on Roman Phrygia. For an overview of the functions of νομικοί in Roman Egypt, see Taubenschlag (1959: 161–5); also Hengstl (2006).

νομικός.⁷ But although the general distinction between advocacy and juristic advisors is not disputed here—although overlap between the groups will be discussed—in some ways the particular designations are less important for present purposes than the activities of any such legal practitioners. This is not to say that designation and function were inevitably divorced from one another—variance in designation may, of course, have indicated different roles or activities. Yet I am more concerned here with considering all those people who engaged in activities connected with offering a range of legal services or advice, rather than with thinking about one particular title. Their possible range of activities appears to have been quite varied, encompassing many services that we could easily envisage Babatha, Salome Komaise, and their fellow litigants taking advantage of in their new and multifaceted legal situation.

Such legal experts were originally considered to have operated primarily at the lower level of society,⁸ though it is more probable that there were in fact a wide range of legal services available of varying quality that extended across societal levels. The various sources indicate that their activities were equally diverse. In the literary evidence, Cicero and Quintilian actually give a remarkably similar picture of *πραγματικοί* as assistants to orators. Cicero, in the late Republican era, describes them as a phenomenon of the Greek world—*infimi homines* who had a good knowledge of the law and thus assisted orators in court⁹—while Quintilian, in a passage of the *Institutio Oratoria* (95 CE), goes so far as to make certain orators helpless without the assistance of their *πραγματικοί*, painting a picture of an advocate completely at the mercy of his knowledgeable assistant.¹⁰ It is also possible that the division was not quite so sharp

⁷ Crook (1995: 155).

⁸ Nörr (1965: 640–1) makes this judgment partly due to what he believes is the relatively sparse evidence for such people and partly, it seems, in view of Cicero and Quintilian's comments on them discussed in the main text; see also Kunkel (1967: 263–70, 354–65) on *νομικοί*, who he thought mostly operated at a lower level among *πραγματικοί* and document writers (Kunkel (1967: 365)). Jones (2007: 1343–4) notes a disparity between Roman Asia and Egypt: whilst in Egypt legal experts appear to have been of a relatively low status, those in Roman Asia could have considerable social status (see Kantor (2013a: 151–2) for more detail on the situation in Roman Asia). Jones attributes this, however, to a difference in the source material; in reality, there may not have been such a contrast between provinces.

⁹ Cicero, *De Oratore* 1.198 (cf. 1. 253); see also Strabo, *Geographica* 12.2.9.

¹⁰ Quintilian, *Institutio Oratoria* 12.3.3–4.

as is suggested by these two sources and in fact the activities of such advisors overlapped with those of the advocates themselves.¹¹ In any case, the two groups are closely linked and the *πραγματικοί* clearly, in Quintilian's eyes, play a key role in the administration of justice—even if it is one of which he disapproves.

The papyrological evidence from Egypt has *νομικοί* primarily advising not advocates but judges. When they were Roman officials, these judges often seem to have used *νομικοί* to find out about local law or tradition. One such example is the well-known Dionysia papyrus, P. Oxy. 2. 237 (c.186 CE), in which Dionysia includes an opinion of a *νομικός*, Ulpian Dionysodorus, among her supporting documentation: this man was originally consulted in a previous case by Salvidius Africanus, a military officer engaged in judicial activities. This was one of several pieces of evidence she included with her petition, the rest being citations of prior decisions. Roman officials thus seem to have made use of such legal experts with a fair degree of regularity, and litigants were not afraid to cite their decisions.¹²

The locating, handling, and copying of relevant documentation may also have lain within this broad sphere of advisory activities.¹³ Indeed, this kind of work by legal practitioners was probably a key factor in the spread of legal literature in the provinces.¹⁴ It is also perhaps evidenced in the increasing tendency to include precedents and other relevant paperwork in petitions made in Egypt:¹⁵ litigants

¹¹ Crook (1995: 154–8) details cases of 'overlap', especially with regard to *νομικοί*; see also Kunkel (1967: 325–9) and very brief comments in Kantor (2009: 262). Nörr (1965: 646) suggests such advice to orators could encompass 'ghostwriting' speeches, though this seems to be mainly inference.

¹² Apart from the *νομικοί* who appear in P. Oxy. 2. 237, col. vii, ll. 14–15 and col. viii, ll. 2–7, further examples may be found in: M. Chr. 84, l. 5, ll. 21–5 (124 CE); P. Oxy. 36. 2757, col. ii, ll. 4–5 (after 79 CE); M. Chr. 372, col. iii, l. 18 (second century CE). See Brunt (1975: 134) on the use of *νομικοί* by Roman officials to find out about local law; Jones (2007: 1338–9) on *νομικοί* as advisors to the Roman authorities; Weaver (2002) more generally on the composition of *consilia*. It should be noted that *νομικοί* may also have been consulted about Roman law: in BGU 2. 388 (= M. Chr. 91), in the late second or early third century CE, a *νομικός* gives evidence about the Roman rule on *tabellae* (see especially col. i, ll. 25–6 and col. ii, ll. 30–6); see Crook (1995: 64–5) for comments; Taubenschlag (1959: 161–2) for further examples.

¹³ This is probably the case in part due to the skills needed in 'the machinery of Roman government and the judicial system' to access such documents (Kantor (2009: 262)).

¹⁴ As Kantor (2009: *passim*, though especially 262–5) has argued.

¹⁵ See Jolowicz (1937) and Katzoff (1972) on the use of precedents in the papyri; this will also be discussed in more detail in Chapter 6.

who were not necessarily literate and almost certainly not thoroughly acquainted with all the relevant previous decisions of Roman officials could not have located and copied such material themselves.¹⁶ Instead, this fell into the sphere of legal experts or advisors who would either have had access to archives where such precedents were kept, or to handbooks or collections of useful precedents which they could then use.¹⁷ Furthermore, Ulpian suggests that one way to punish provincial advocates, who may have overlapped with the *πραγματικοί* and *νομικοί* at this level, was to prohibit access to the archives where such documentation would usually be stored.¹⁸ *Νομικοί* or the equivalent practitioners may also have acted as translators; in BGU 1. 326, col. ii, l. 23, Lucius Geminianus, a *νομικὸς Ῥωμαϊκός*, is found translating a will into Greek. Locating, copying, and even translating items could therefore certainly fall within their general sphere of operation.

The picture we receive from the sources is thus one without clearly defined limits, in which certain people acted as a kind of 'legal dogsbody'.¹⁹ Their activities could include advising a range of people, and handling, copying, or translating relevant documentation for their clients. It is this latter practice which it is possible to identify in the Babatha and Salome Komaise archives. The nature of the evidence means that if advisory activities within a courtroom were occurring, such as those described by Quintilian, the documents we have here would be unlikely to attest it—these are not trial transcripts after all, but pretrial paperwork.²⁰ This also means we can say nothing more generally of the activities of advocates in relation to these archives, but I would suggest that it is possible to detect the presence of legal advisors from the archival evidence, and that thinking about

¹⁶ The documents included with P. Oxy. 2. 237 (186 CE), mentioned above, p. 91, are a prime example of this, as are the decisions and proceedings included in P. Oxy. 6. 899 (= W. Chr. 361) (200 CE).

¹⁷ On such collections, see Katzoff (1972: 282–9).

¹⁸ D.48.19.9.6 (Ulpian, *de officiis*, Book 10). Isaac (1992: 66–7) assumes that such official archives existed in Rabbath-Moab and Petra: see Chapter 1, p. 33, n. 28 for possible references to public archives in these documents.

¹⁹ Crook (1995: 158) sums this up rather nicely: 'What stands out is the untidiness of the picture, the way in which the different roles within the law were carried out in many combinations.'

²⁰ Jones (2007: 1341) makes precisely this point on the nature of the evidence in the Babatha archive. We do have examples of trial transcripts from Egypt: Crook (1995: 60–1) gives a good introduction to the nature of these documents.

the location of relevant documentation is a particularly promising line of investigation.

THE ARCHIVES

Three near identical papyri strongly pertain to this particular topic: namely, P. Yadin 28–30. These provide the most compelling evidence from the two archives for the presence of some kind of legal advisors and access to legal literature in the province of Roman Arabia and are consequently worth considering at some length. Why did Babatha have these papyri in her purse, and whence did they come? And most significantly, what does their presence tell us about legal knowledge and access to it in this particular community?

P. Yadin 28–30

Description, Context, and Problems

P. Yadin 28–30 were found among Babatha's paperwork, and are three near identical copies of a Roman formula. This is rather an extraordinary circumstance: formulae were used in the provinces, though the extent and exact nature of their use have been much debated,²¹ and yet

²¹ See Turpin (1999: 506–14) on formulae specifically and *passim* on Roman legal procedure; more recently, also Metzger (2015) with comprehensive bibliography; *ibid.* 283–7 on the formulary procedure specifically. Most of the comparative evidence for this formula, or formulae more generally, being used in the provinces, is distinctly Spanish in nature: the *Lex Rivi Hiberiensis*, 3. 38–43 (see Lloris (2006) for the text) provides a formula for anyone wishing to bring an action, and IRT 304 also suggests some sort of formulary procedure (on which, see Lemosse (1998: 241–2)). The *Tabula Contrebiensis* (87 BCE) might also be worth considering here: this is a record of a judgment made by the senate of *Contrebia Belaisca*, though set up by the proconsul, which is, as noted in Richardson's (1996: 89) discussion, 'based almost entirely on the formula used by the praetors in the courts in Rome', despite the fact that Roman law is not applied. Metzger (2015: 292–3, n. 10) contains an overview of the sources of formulae along with bibliography, which, along with those cited above, include *lex de Gallia Cisalpina* Ch. 22 (Cisalpine Gaul, first century BCE), PSI 7. 743 *recto* fr. E (Egypt, c.100 CE), T. Sulpicii 31 (Puteoli, first century CE). On provincial procedure more generally, see, *inter alia*, Hackl (1997) and Lemosse (1998); for the debate over *cognitio* and the formulary procedure in senatorial and imperial provinces, see Patsch (1905: 61), and Kaser (1967) and Wlassak (1921: 4–31) for opposing views.

this is—as far as I am aware—the only case of a model legal formula being found in the possession of a *peregrina* within a private archive.²² Two of the papyri, P. Yadin 28 and 29, are written in the same hand, though P. Yadin 30 appears to have been copied by someone else. Since the following discussion will focus on the details of these papyri, it is worth reproducing the text in full:

P. Yadin 29

- μεταξὺ τοῦ δεῖνος [τοῦ] δ[εῖνος]
 ἐγκαλοῦντος καὶ τοῦ [δεῖνος ἐν-]
 καλουμένου μέχρι (δηναρίων) [B]φ ξενο-
 κρίται ἔστωσαν ἐπε[ὶ] ὁ δεῖνα
 5 τοῦ δεῖνος ὀρφανοῦ ἐ[πι]τ[ρ]ο[π]ή[ν]
 ἐχείρ[ι]σεν, περὶ οὗ πράγμα[α]τος
 ἄγεται, ὅταν διὰ τοῦτο τὸ πρᾶγμα
 τὸν δεῖνα τῷ δεῖνι δοῦναι ποιῇ-
 σαι δέη ἐκ καλῆς πίστεως,
 10 τούτου οἱ ξενοκρίται τὸν δ[ε]ῖνα
 τῷ δεῖνι μέχρι δην(αρίων) Bφ
 κατακρινάτωσαι, ἐὰν δ[έ] μ[ὴ]
 φαίνεται ἀπολυσάτωσα[ν].

P. Yadin 30

- με[ταξὺ] τοῦ δ[ε]ῖνος
 τοῦ δ[εῖνος] ἐ[ν] κ[α]λ[ο]-
 ὠντος καὶ τ[οῦ] δ[ε]ῖνος
 τοῦ δ[ε]ῖνος ἐνκαλ-
 5 ουμένη[ν] μέχρι δ-
 ηναρίων [Bφ] vacat
 ξεν[ο]κρίτε [ἔστω]σαν.
 ἐπὶ ὁ δεῖνα [τοῦ] δ[ε]ῖ-
 νος [δ]οφ[α]νοῦ ἐ[πι]τ-
 10 ροπ[ή]ν ἐ[κ]είρ[ι]σεν,
 περὶ οὗ πράγματος
 ἄγεται, ὅταν διὰ
 τοῦτο τὸ πρᾶγμα
 τὸν δ[ε]ῖνα τῷ δεῖνι
 15 δοῦ[ν]αι [ποιῇ]σαι δέη
 ἐκ <κ>αλῆς [πίστε]-
 ως, τ[οῦ]του οἱ ξενο-
 κρίτ[ε] τὸν δεῖνα τῷ
 δ[ε]ῖνι μέχρι δην(αρίων)
 20 B[φ] κατακρινάτω-
 [σαν, ἐὰν δὲ μ[ὴ] φαίνη-
 [ται, ἀπολυσάτωσα]ν.
 ἐ[γ]ράφη διὰ]

²² The nearest comparison is probably that already noted by Oudshoorn (2007: 339–40), who mentions the inclusion of a rescript of Gordian III (P. Tebt. 2. 285, 238 CE) in a family archive in Egypt but explicitly contrasts this with the *actio* (the former attests to ‘substantive law’, the latter only to ‘formal law’ in her view); see Hanson (2005: 93–5) for further comments on Aurelia Sarapias’ papers (including P. Tebt. 2. 285) in comparison with Babatha’s. T. Sulpicii 31 (first century CE), a formula found in the Sulpicii archive, also deserves mention, though this is not simply a blank model, as we have in Babatha’s case, and, of course, originates from Puteoli, so does not attest provincial practice.

Between a plaintiff X, son of Y, and a defendant A for up to 2,500 denarii there shall be *xenokritai*. Since A, son of B, has exercised the guardianship of orphan X, concerning which matter the action lies, whenever by reason of this matter A is obligated to give or do [something] to X in good faith, the judges of this shall award judgment against A in favour of X up to 2,500 denarii, but if [such obligation] does not appear, they shall dismiss.²³

The papyri were written in Greek, though appear to be a translation of a Latin original. The text of an example formula in *Inst. Gai.* 4. 47 has frequently been used as a comparison, including by Lewis in his own edition of the papyri. Since some of the following discussion references literature that makes such comparisons, it is also reproduced here:

iudex esto. quod Aulus Agerius apud Numerium Negidium mensam argenteam deposuit, qua de re agitur, quidquid ob eam rem Numerium Negidium Aulo Agerio dare facere oportet ex fide bona, eius iudex Numerium Negidium Aulo Agerio condemnato. si non paret, absolutio.

Let X be judge. Whereas Aulus Agerius deposited with Numerius Negidius the silver table which is the subject of this action, in whatever Numerius Negidius ought on that account in good faith to give to or do for Aulus Agerius, in that do you, judge, condemn Numerius Negidius to Aulus Agerius. If it does not appear, absolve.²⁴

Although the papyri are undated, the fact that they represent an *actio tutelae* (action on guardianship) means that they have typically been thought to relate to Babatha's dispute with the guardians of her orphaned son Jesus which formed the basis of one of the case studies in Chapter 1.²⁵ Whilst an *actio tutelae* would seem logically enough to fit into the context of this dispute, its precise applicability is rather difficult to pin down. According to accepted principles of

²³ The text and translation (very slightly adapted) are those of Lewis (1989: 118–20). The texts given are just those of P. Yadin 29 and 30; the text of P. Yadin 28 is identical to that of P. Yadin 29, so there seems little reason to reproduce it here. The only differences between the two are not in the text itself but in the spacing of the words on the papyrus and this is easily accounted for by the fact that P. Yadin 28 is 0.5 cm narrower than P. Yadin 29.

²⁴ *Inst. Gai.* 4. 47. Text and translation (slightly adapted) from De Zulueta (1976); see also Lenel's (1927: 288) comments.

²⁵ See Chapter 1, pp. 48–52.

Roman law, the *actio tutelae* could only be brought at the end of a guardianship,²⁶ usually by the ward himself when he had come of age, though sometimes by a new or co-guardian against one who had been removed.²⁷ Under these regulations, Babatha could not therefore bring such an action. She could bring a *crimen suspecti tutoris*, a charge against an untrustworthy guardian, asking for his removal,²⁸ but this does not seem to be what is being requested by Babatha in her proceedings—at no point in the papyri does she request a guardian's removal. Her concern is, rather, to ensure that she receives a higher level of maintenance for Jesus' upbringing.

Due to these uncertainties, the precise details of the way that the *actio tutelae* was used, or intended to be used, in the current case has remained a subject for speculation when approached from a 'legal systems' standpoint. But while we may not be able to reach definite conclusions about the precise legal applicability of the three papyri, they still provide valuable information about legal knowledge in the area and access to it.

The Possible Origins of the Formula

The *actio* is commonly thought to have been copied from a Latin original at some point, due to the close correspondence with the example formula cited by Gaius (on p. 95 above), and the idiosyncrasies of the Greek—for example, ἄγεται in l. 7 is not used in the Greek sense but as a 'carry-over' from the Latin meaning of *agitur*.²⁹ While it has not been adapted for the specifics of Babatha's case, it did suit its provincial context rather well. There are a few indications of this.³⁰ First, rather than a single judge, ξενοκρίται are appointed. The word is rare and, based on an annotation in a late antique glossary, has two possible translations: *iudices peregrini* or *recuperatores*.³¹ While the former used to be favoured, the term here

²⁶ D.27.3.9.4 (Ulpian, *Edict*, Book 25).

²⁷ See Oudshoorn (2007: 334–6) on the second possibility in this case.

²⁸ As Cotton (1993: 102–3) points out; cf. *Inst.* 1.26; D.26.10.

²⁹ Lewis (1989: 120).

³⁰ Nörr (1998: 319–20) has discussed these at length: his arguments are only summarized briefly here.

³¹ *CGL* 3. 336, ll. 44–5; 528, ll. 5–6.

now generally seems to have been accepted to be a translation of *recuperatores*, a board of judges often concerned with status which may have included non-Romans.³²

Secondly, a *taxatio* was added to the formula. This was a limit on the amount for which the judges were competent and for damages they could award. It was set at an amount equivalent to the very common standard ‘fill-in’ sum of 10,000 sesterces. The monetary unit, however, has been changed from sesterces to denarii, which were commonly used in this province,³³ suggesting that the eastern setting had been taken into some account.

Finally, instead of the standard Roman ‘fill-in’ names—Aulus Agerius (the plaintiff) and Numerius Negidius (defendant)—ὁ δεῖνα is supplied. The new blank names in the formula also follow peregrine usage—X son of Y (ὁ δεῖνα τοῦ δεῖνος)—rather than Roman.³⁴ There are, therefore, convincing reasons to think that the formula had been adapted to suit its provincial setting, if not Babatha’s case specifically.

There are two plausible possibilities for the origin of this ‘provincial’ formula, both of which fit well with the observed indications of its specific context. The first is that it came from a forensic handbook of such formulae, written in Greek. Such a handbook may have been in use at the local assizes, and locals, or more probably their legal representatives, could have copied from it when preparing their cases.³⁵ The use of this kind of ‘low-level’ legal literature fits in rather well with recent acknowledgements of a more widespread use of such literature in the provinces, often, in this period, in the form of collections of precedents on specific topics.³⁶ Legal experts are thought to have had a key role in its distribution.³⁷

³² This is mainly due to the articles of Nörr ((1995a), (1998: 322–6), and (1999)) on the subject. As Cotton and Eck (2005: 28) point out, boards of *recuperatores* that included non-Romans would have been a good option for administering justice in a newly acquired province where there may have been a lack of Roman citizens.

³³ Nörr (1998: 320).

³⁴ Nörr (1998: 320).

³⁵ This was proposed by Biscardi (1972: 140–51). He further suggested that such a Greek handbook might have been written in a nearby Hellenic cultural centre—Berytus, famous in a later period for its Roman law school, was his preferred candidate.

³⁶ See Katzoff (1972: 282–9) on this and Biscardi (1972: 141–51) for an overview of the evidence for the use of legal literature, including collections of forms.

³⁷ Kantor (2009: *passim*, though especially at 262–5).

Alternatively, the Latin original may have been found in the provincial edict,³⁸ assuming, of course, that this existed for Arabia, an assumption that is in fact far from a given.³⁹ This hypothetical situation would, however, have paralleled the situation in Rome, where formulae were included in the praetor's edict. The *actio* would then have had to have been copied for Babatha by someone who could cope with the translation of technical vocabulary such as *recuperatores* or *iudices peregrini* from Latin into Greek.⁴⁰ This would then lend support to the idea there were people around who had sufficient specialist knowledge to perform such a task, i.e. legal practitioners, advisors, or experts of some sort.

Procurement of the Formula

Babatha was illiterate, so she could never have identified and copied down the formula herself, even leaving aside the specialist knowledge that was likely to have been a prerequisite for such a task. Indeed, there is no reason to suppose that she would have been so conversant with Roman law and procedure that she would know to request a copy of a specific *actio*; the idea seems ludicrous. It is supremely likely, then, that she relied on advice. Whether the three copies were made from the provincial edict or from a handbook, some degree of legal expertise must be posited along the way even to locate the relevant formula.⁴¹ This, I would suggest, is one of the strongest arguments for the presence of legal practitioners in Roman Arabia at this time.⁴²

³⁸ Seidl (1968: 348); Nörr (1995a: 89) (see also Nörr (1998: 322) and (1999: 269–70)); Oudshoorn (2007: 323; 332) seems to subscribe to Nörr's view.

³⁹ The problem of the existence of the provincial edict will be discussed in Chapter 6, pp. 170–1.

⁴⁰ Nörr (1995a: 94). Nörr (1995a: 89) further suggests that we are here dealing with 'a standard translation—either from the governor's bureau or from a local *nomikos*'; see also Nörr (1998: 323) and (1999: 270).

⁴¹ See Kantor's (2009: 262) comments: 'Even getting access to the *exempla proconsulum*, although they would presumably be often available in the provincial archives of Pontus et Bithynia, probably involved no small difficulty for an untrained layman, to judge from the occasional problems of the governor himself.'

⁴² In this, I follow on from the arguments of Kantor (2009: 262–3). Oudshoorn made a slightly different suggestion that one copy may have been provided by the governor himself as an addition to his *subscriptio* to Babatha's initial petition, and another copy was provided later by a local *νομικός*, 'in preparation for the actual suit (initiated by P. Yadin 14), or perhaps even at a later stage when Babatha was convinced that the *actio*

The Number of Copies

A further puzzle is the fact that Babatha had three copies of the formula, which remained in her leather purse to be found in the 1960–1 excavations. If they were meant to help her case, why did they remain in her purse? Indeed, the riddle of this is that it strongly suggests she never got around to actually submitting them to anyone. Why not?

Regarding the question of why Babatha had multiple copies, we should perhaps pick up on how documents were handled more broadly across the archives. Babatha and her contemporaries were in the habit of keeping copies of their paperwork. Several of the documents in the archive are copies, and indeed it is sometimes explicitly stated that more than one copy of a particular document was drawn up: two such cases are P. Yadin 25, a summons and counter-summons in a separate dispute, and P. Yadin 26, another summons and reply.⁴³ P. Yadin 12 is also explicitly stated to have been copied from the minutes of the *βουλή* of Petra, and P. Yadin 13, a petition by Babatha to the governor about the guardians, was plausibly classified by Lewis as a copy that she kept for her own records based on the fact it contains no signature.⁴⁴ P. Yadin 16, a registration of land for the census, is certainly a copy—in addition to the explicit statement to this effect in the papyrus, the original Aramaic attestations have been translated into Greek; P. Yadin 11 can also be classified as a copy on the same basis.⁴⁵ It is also stated in P. Yadin 23, ll. 23–4 that both parties have a copy of the document. From the Salome Komaise archive, we have two further examples: P. Hever 61 is an official copy of a land declaration,⁴⁶ and P. Hever 62, another land declaration, is explicitly marked as a copy.⁴⁷ Copies, therefore, abound.

would only serve her once her son would have come of age' (Oudshoorn (2007: 323)). I have some reservations that the governor's office would have been so helpful as to provide a copy of relevant documents in response to petitions they received, considering how great the workload probably was (this will be discussed further in Chapter 6), but even if we follow Oudshoorn's theory, we are still dealing here with the presence of a *'νομικός'* (to use Oudshoorn's term) of some sort.

⁴³ P. Yadin 25, ll. 66–7; P. Yadin 26, l. 20.

⁴⁴ Lewis (1989: 51).

⁴⁵ In this document, Judah's attestation is written in Greek and marked as a translation: see P. Yadin 11, ll. 29–30.

⁴⁶ This papyrus is designated a copy on the basis that the subscriptions (by two people) are in the same hand as the main text, and one of these, that of the prefect, is marked as a translation.

⁴⁷ P. Hever 62, Frag. a, ll. 1–2/3–4.

It is consequently entirely plausible that Babatha intended to keep one copy of the *actio* for her records. The destination of the other two documents depends on the ultimate use of the *actio* (see below, pp. 101–4). In brief, both may have been intended for the two guardians, if the papyri were used in a more informal setting. Otherwise, if Babatha was only formally suing one guardian, one copy may have been meant for that guardian; the other was to be submitted to the governor along with her petition. Indeed, submitting such paperwork would be a wise move on the part of litigants: supplying the governor with the very formula he needed to pass on to the finders of the fact might make it more likely he would actually take action—it made his job easier. This, at least, would explain the three copies.

There is, however, the further problem of why P. Yadin 28–9 were written in one hand, P. Yadin 30 in another. It is possible that Babatha had one copy made by her legal advisor, and then had the two additional copies made by a more inexpensive scribe, giving the problem an economic solution.⁴⁸ Tempting as this is, it would mean that we would probably have to posit P. Yadin 30 as the original papyrus bought from the more expensive advisor, since it is the only papyrus written in a different hand. Yet there does not appear to be any indication that this was of significantly higher quality than P. Yadin 28 and 29, and, indeed, the opposite might even be the case. Lewis observes that the writer of P. Yadin 30 is given to false syllabification,⁴⁹ and there are a few minor differences in the Greek from P. Yadin 28 and 29: ξεν[ο]κρίτε (P. Yadin 30, l. 7) instead of ξενοκρίται (P. Yadin 29, ll. 3–4) and ἐπὶ (P. Yadin 30, l. 8) instead of ἐπε[ι] (P. Yadin 29, l. 4).⁵⁰ This would mean that the cheaper scribe corrected the Greek of the more expensive legal advisor—a possibility, since both may have been offering different skill sets, but perhaps a little surprising.⁵¹ The fact that the papyri were written in different hands therefore remains something of a puzzle.

⁴⁸ Oudshoorn's (2007: 232) suggestion that one was issued by the governor and another (presumably, in fact, another two) was made by a local νομικός might perhaps offer an alternative solution (see discussion in n. 42).

⁴⁹ Lewis (1989: 118).

⁵⁰ There is also an additional ἐ[γγραφῆ διὰ] in P. Yadin 30, though since most of this is restored I am somewhat unwilling to make any speculations on the basis of it.

⁵¹ The handwriting is markedly different in P. Yadin 30, which is in a hand 'characterized by upright, rounded letter forms' (Lewis (1989: 118)) and as a result is rather clearer and easier to read than that in P. Yadin 28 and 29.

The Use of P. Yadin 28–30: Three Possible Solutions

a) An unused option

It is possible that the papyri were intended to be submitted to the governor along with an initial petition as a request either to appoint *ξενοκρίται*,⁵² if the property in question was under the 2,500 denarii limit, or as proof it should be heard in a court with greater competence—perhaps that with the governor himself presiding—if it exceeded this (rather high) limit. These papyri, therefore, could have been used as some sort of supporting documentation.

The fact that Babatha still had multiple copies of the *actio* in her purse strongly implies that she never got around to using them, perhaps because she never had the chance to do so. If only one copy had been in her purse, then it would have been perfectly plausible that this was a document kept simply for her own records, but this seems highly unlikely when the papyri exist in triplicate—why keep three copies of the same document purely for one's own records? Thus, Babatha may have intended to use the *actio* to sue in the initial case but never had the opportunity, perhaps because the case was settled before reaching court.⁵³

b) Planning ahead

The second option only slightly varies from the first. It is possible that Babatha was preparing another stage in the case as the guardianship neared an end. This would have occurred some years after the initial proceedings. In this secondary stage, she would encourage her son, if

⁵² See Seidl (1968: 349): 'Wer mit dieser Formula klagen will, wendet sich an den Statthalter und dieser entscheidet, ob er der Bitte um *ξενοκρίται* nachgeben wolle'; in light of this, it would seem as though the formula would be submitted to the governor as part of a bid to convince him to appoint the *ξενοκρίται*. There is, however, some ambiguity as to the exact nature of the 'formula': Jackson (1981: 362, n. 98) categorized it as direct instructions to a delegated judge issued by the governor—such instructions would resemble the formula and the difference would in fact be 'extremely slight'. If this was the case, we would need to explain why Babatha had three copies of them in her purse; furthermore, Jackson's exact differentiation between the two is a little unclear. See also Wolff (1980: 786), who sees the papyri as resembling instructions to *iudices pedanei*.

⁵³ From the perspective of the accepted principles of Roman law, she would have had to have had one guardian removed first, possibly using the *crimen suspecti tutoris*, and then persuaded the co-guardian or new guardian to use the *actio* to sue (see Nörr (1998: 321)); see also Lemosse (1968: 375), who also thought that the *actio* was for use at some point after the termination of the original guardianship.

he had come of age, or another guardian to sue, and the *actio tutelae* would be used as part of this process.⁵⁴ This second stage might never have come to fruition because of the outbreak of the Bar Kokhba revolt, when she fled to the caves. The papyri, therefore, remained in her purse.

If so, Babatha was remarkably far-sighted in her legal business. And patient: she presumably would have accepted some sort of judgment or settlement with which she was unhappy, with the intention of contesting the guardians' behaviour again later. She was playing a long game.

c) A bargaining chip

A different solution might be posited if we entertain the possibility that these three papyri were intended to be used in a rather more informal setting.⁵⁵ While pursuing the dispute against Jesus' guardians, Babatha may have asked for a meeting with her opponents at which she presented each guardian with a copy of the *actio*, keeping one for herself. The purpose of this would have been to intimidate the guardians into settling—here, the high figure of 2,500 denarii as a limit on potential damages becomes a key bargaining chip. This is not to say this was not a standard figure, only that it was also a key factor in how or why Babatha/her advisor thought that the formula could be usefully deployed. This was meant to make her opponents worry about the potential sum she might be awarded if she won in a Roman legal forum. The threat, then, is: 'Come to terms, or I go to court and it could cost you very dearly.'

This fits rather neatly with the kind of legal interactions that will be suggested in Chapters 5 and 6. The *actio*, in these circumstances, does not need to have a direct legal application to the case at hand from the 'systems' viewpoint—it is provided purely as an example of *what could happen* (in Babatha's or her advisor's eyes at least). It also, to

⁵⁴ Chiussi (2005: 124) takes this line, arguing that Babatha intended to get her son to sue using the *actio* once he came of age; see Turpin (1999: 512) for an identical view. Oudshoorn (2007: 335–6) also proposed that the *actio tutelae* was intended to be used 'in a second phase of proceedings', after the removal or death of a guardian; Goodman (1991: 171), in a brief discussion of the papyri, also puts forward a similar hypothesis.

⁵⁵ I am extremely grateful to Dr David Taylor for suggesting this explanation to me when I presented a paper covering much of the same material as this chapter at the Seminar on Jewish History and Literature in the Graeco-Roman World at the Oriental Institute, Oxford.

provincials, looked or sounded ‘Roman’ and therefore possibly in some way authoritative, legitimate, and potentially intimidating—the psychological implications of this should not be underestimated. Considering the fact that this case may, indeed, have been settled, it is not much of a stretch to envisage a meeting of such a kind taking place.⁵⁶

In such a situation, the *actio* is no longer used in a manner that was strictly legally relevant. Instead, its text is employed more as a bargaining chip. Since such a setting would have been informal, any similar meetings in the ancient world would have left little documentary trail—especially if no resolution was reached in many such meetings—and so it is somewhat difficult to trace other uses of documentation. But there are certain similar cases which attest to a use of either paperwork or law in a way that was meant to sway a judge or opponent without necessarily having a strictly ‘proper’ legal relevance. Pliny’s litigants frequently produce documents in court, some of which either have no relevance to his particular province or he suspects of being forgeries.⁵⁷ Reading between the lines, what the litigants seem to have been doing is trying to use documentation to lend support to their cases—whether it was genuine or not—either without knowing its falsity/irrelevance or relying on Pliny’s supposed ignorance of the facts. Or rather this is what Pliny believed they were doing: he thought there was some kind of slightly dubious use of paperwork going on.

If we go back further in the ancient world, the Attic orators also frequently misinterpreted, quoted selectively, paraphrased, or added details to laws that had been read out in court, relying on the fact that their audience would have forgotten these details by the time that they engaged in such manipulation of the law.⁵⁸ Indeed, Demosthenes comments (in a reply to Aeschines): ‘Are you

⁵⁶ One could also imagine the presence of her legal advisor at such a meeting to lend extra force to the intimidation attempt, though this is, of course, firmly in the realms of speculation.

⁵⁷ See Kantor (2009: 258–9) for discussion. One case discussed by Kantor (2009: 260–1) is especially relevant here and provides a rather nice example of both points: in Pliny, *Epistulae* 10.65, a litigant produced a number of documents (including letters from several emperors) whose authenticity Pliny doubted. Trajan confirmed that some at least were authentic but that they had no relevance to Bithynia (10.66).

⁵⁸ See Canevaro (2013: 27–32) for an analysis of the manner in which the orators did this, along with further examples.

not ashamed to bring a charge because of envy and not because of any actual wrong, *modifying laws and removing parts from them* when they should rightly be read out in their entirety to those who have sworn to vote according to the laws?⁵⁹ Exploiting an audience's supposed ignorance was not unheard of, even when the cited laws had previously been read out before the court. It is not difficult to see the scope for similar exploitation, especially when one was dealing with populations in which there might have been varying levels of knowledge of different laws.

The use of the *actio* in such a manner, which relied on the other parties' lack of relevant legal knowledge, is, therefore, not alien to the use of law or paperwork in the ancient world. To explain the presence of the papyri in Babatha's purse, we would have to conclude that she collected the copies after the meeting—in such a semiformal situation this would not have been at all impractical.⁶⁰ Otherwise, the same solutions as were suggested for the previous two possibilities could also have applied; the case may have been settled before such a meeting, or the meeting may have been planned but failed to take place because of the outbreak of the Bar Kokhba revolt. As a result, Babatha kept her papyri, which were obviously so valuable to her that she took them when she fled, perhaps hoping to resume matters in the event of her return.

The Implications of P. Yadin 28–30

Beyond concerns of their immediate application, the papyri offer us some information about legal knowledge, use, and concepts. Roman legal forms were in some way accessible to provincials in Roman Arabia. This may have been from the handbook or edict but the point is they were available and *they were actually used by litigants*. The latter is a key point—people did not ignore what they considered to be

⁵⁹ Demosthenes, *De Corona* 121 (my italics): ἀλλ' οὐδ' αἰσχύνει φθόνου δίκην εἰσάγων, οὐκ ἀδικήματος οὐδενός, καὶ νόμους μεταποιῶν, τῶν δ' ἀφαιρῶν μέρη, οὐδ' ὅλους δίκαιον ἦν ἀναγιγνώσκεισθαι τοῖς γ' ὁμιωμοκόσι κατὰ τοὺς νόμους ψηφιεῖσθαι. Text is from the Loeb edition; translation is that of Canevaro (2013: 29).

⁶⁰ Her motivation for doing so might simply have been economic—she had paid for them and therefore considered them her property, not to be given away. Alternatively, perhaps she wanted to keep them in case they could ever be used subsequently in court—in which case, why pay for even more copies?

the rules that applied to their new situation; they were determined to find out and make use of Roman forms by using knowledgeable intermediaries.

These knowledgeable intermediaries had to have been present: these papyri could not have been located by the litigants themselves. Considering the level of expertise needed to access such literature as this, to locate it, and possibly to translate it (depending on its origin), I would go so far as to say that the existence of some sort of legal experts/advisors in Roman Arabia goes beyond being probable: we have to assume their existence in order to explain the consequent existence of P. Yadin 28–30.

SCRIBES AND ADVISORS: A PURELY TERMINOLOGICAL DISTINCTION?

In Chapter 2 and this chapter, I have distinguished between ‘scribes’ and ‘legal advisors’. But this may be something of a false distinction, and the two groups—if that does not imply too much cohesion—were probably not quite as separate or distinct as this might imply. What we are instead dealing with is a spectrum of people with different levels of legal knowledge and slightly different emphases in their skill sets. Both ‘writers’ and ‘advisors’ fall within this broad spectrum, but individuals have different levels of legal, or indeed linguistic, knowledge within it.

Consequently, my suggestion in Chapter 2 holds true: knowledge of certain Roman legal forms, such as a *stipulatio* clause, and the ability to include these in contracts did not make all writers legal experts. Some writers may have had very little legal expertise, at least when they were initially hired. Instead of being what we—or even the litigants themselves—would have considered true ‘experts’, they were in fact principally writers but still somewhere on the spectrum of legal knowledge, or at least *perceived* legal knowledge. Legal advisors, in the sense considered here, were probably somewhere within this same spectrum but perceived by those involved to have a higher degree of expertise in a specific legal realm. Their roles may have and probably did overlap—such ‘advisors’ may very well have written contracts or petitions, as seems to have happened elsewhere in the empire, without this being left purely to the writers.

Provincials like Babatha and Salome Komaise, therefore, seem to have had access to a range of legal advice of varying degrees of accuracy and quality. Litigants could, thus, seek help and most likely select the source of their aid, choosing in accordance with their individual priorities, which in turn may have varied depending on the specific occasion.

The Parties

Scribes wrote, advisors could be consulted, but behind all this were of course the parties themselves. They owned the property, had the power to dispose of it, and, in litigation, they were the ones with the actual complaints—to reduce them to mere passive bystanders at the mercy of their writers and advisors would, therefore, be a grave error. Both Salome Komaise and Babatha seem to have valued their documents highly, to the extent that they took the trouble to bring them to the cave to which they fled. Their paperwork was obviously important to them, and we would expect their attitude towards the contents to reflect this, despite the layers of mediation involved. Thus, if Chapters 2 and 3 have served to place the emphasis on the less visible agents behind the documents' formulation, it is now time to redress the balance and focus upon the parties themselves.

Yet, as was observed in Chapters 2 and 3, trying to identify the authentic voice or mentality of the parties is a problematic endeavour to say the least. We are dealing with collaborative processes in drawing up these contracts, and legal documents employ a particular kind of self-referencing language that makes identifying the 'truth' or 'facts' or 'reality' behind the case an extremely tricky endeavour. Nevertheless, in terms of the provincial period, we can think about the possible effects of the new Roman presence and the legal fora or institutions associated with it on people's behaviour, their use of these documents, and their attitudes towards their legal transactions.

This kind of investigation assumes that a courtroom has a broader effect than is implied if we just think of it in terms of its adjudicative activities: to employ Galanter's terminology, what we

are doing here (and will continue doing in Chapters 5 and 6) is beginning to think about the Roman court as more of a 'centrifugal' institution, 'as one component of a complex system of disputing and regulation'.¹ Thus, the very presence of the court and of its activities has a much wider effect beyond those activities and decisions in and of themselves. This comes under the broad heading of what Galanter called the 'radiating effects' of courts on dispute behaviour.² Of particular note for the current chapter are what he termed 'general effects':

Many sorts of 'general effects' result from the communication of information by/about the forum and its behaviour and the response of others to such information.³

Furthermore, how disputants and regulators react to such information, or 'messages', from the court can vary significantly depending on the audience: for example, 'naïve amateurs' will use such information differently from 'sophisticated professionals'.⁴ In short, the way that people interpret the information they receive about a court and the conclusions they reach based on this may differ significantly even within a community, depending on the people involved. Once again, their reactions are 'situated' or 'localized'. They are dependent on a variety of factors that may either be unique to their specific situation or be quite common and yet still combine in ways that vary from person to person or place to place.

Thus, in these archives, although we may not be able to find the parties' 'voices', we can take the time to consider explicitly how the information that radiated from and about the Roman court—or indeed the Roman presence more generally—may have influenced provincials' behaviour in their legal disputes and transactions. This involves thinking about what information may have been transmitted and received and how this happened, as well as the kinds of decisions that were involved in drawing up the papyri as they have come down to us. Essentially, we can begin to consider how such information affected people's ordinary, everyday actions and what this, in turn, tells us about the legal culture of the community.

¹ Galanter (1981: 17).

³ Galanter (1981: 11–12).

² Galanter (1981: 11).

⁴ Galanter (1981: 14–15).

THE NON-GREEK DOCUMENTS

The majority of the documents in these two archives from the Roman period were written in Greek, and this corpus also includes those which are typically considered the most legally diverse or complex and so have prompted the most debate. As such, when discussing the effects of the new ruling presence on the litigants, their decisions, and consequently their documents, the natural impulse is to turn first to the Greek papyri. But there were Nabataean and Jewish Aramaic documents written under the Roman administration, and these do not deserve to be neglected. Indeed, their very existence—in what became such a Greek-dominated legal environment—merits consideration. Why would people choose to commission scribes to write in these local languages rather than that of the administration well into the Roman era? And are there any other signs of Roman influence ('radiating effects', if you like) on the format or phraseology of these papyri?

First, the documents themselves. The non-Greek documents that are securely dated to the Roman period are listed in Table 4.1.

Two features of the documents definitely reflect the new Roman presence in the area. First, P. Yadin 8 and 9 both mention payment, 'to our lord, Caesar, as well' (ולמרנא קיסר כות).⁵ This was in all probability a government tax paid on private transactions, which seems to have corresponded to the same tax paid to the Nabataean king before 106 CE. The latter is mentioned in P. Yadin 2 and 3, both written during the regnal period.⁶ The principals were therefore aware of the Roman presence, acknowledged it, and paid what they owed. Mentioning and paying the tax could, however, be seen as the bare minimum of involvement with their Roman overlords and differ significantly from an enthusiastic uptake of Roman legal forms. The tax had to be paid and the conditions of its payment were therefore included in the transactions.

A second indicator of Roman presence may be detected in the dating formulae used in these documents. All those written after

⁵ P. Yadin 8, l. 9; P. Yadin 9, l. 9.

⁶ P. Yadin 2, l. 15/40; P. Yadin 3, l. 18/45–6. Both documents also refer to a leasing tax which is to be paid to the king by the seller until the land in question has been registered with the authorities: see P. Yadin 2, ll. 13–14/37–8, P. Yadin 3, ll. 14–16/40–2. See Yadin et al. (2002: 228–9 on P. Yadin 2; 116 on P. Yadin 8) for further discussion.

Table 4.1. The non-Greek documents in the Babatha and Salome Komaise archives written after 106 CE

Document	Date (CE)	Description	Language	Dating Formulae
P. YADIN 6	119	Tenancy agreement between Judah and a certain Yohana ⁷	Nabataean Aramaic	Consular year; province year
P. YADIN 7	120	Deed of gift from Babatha's father to his wife	Jewish Aramaic	Consular year; imperial year; provincial year; Babylonian day and month
P. YADIN 8	122	Yehoseph buys or sells a donkey from/to his brother.	Jewish Aramaic	Consular year; imperial year; provincial year; Babylonian day and month
P. YADIN 9	122	Waiver or sale (extremely fragmentary)	Nabataean Aramaic	Consular year; provincial year
P. YADIN 10	Unknown	Babatha's <i>ketubbah</i>	Jewish Aramaic	None surviving
P. HEVER 12	131	Receipt for dates	Jewish Aramaic	Babylonian day and month; provincial year

106 CE show some Roman influence (see Table 4.1). The primary difference from the documents written in the regnal period is in the yearly dating: this changes from the regnal year to consular, provincial, imperial, or a combination of these.⁷ In this, they exhibit a similar pattern to documents from Dura-Europos and Judaea, which also typically date by Roman consular or imperial year.⁸

⁷ To clarify the differences a little: the documents from the Nabataean kingdom were typically dated by reference to the year of the current king's reign. So, for example, P. Yadin 2, l. 1 (97/8 CE) dates in the following manner: 'On the third of [K]islev, year t[wen]ty and eight of Rab'el the King, King of the Nabataeans' (בתלתה ב[כ]סלו שנת ע[שר]ין ותמונא לרבאל מלכא מלך נבטו). In P. Yadin 7 (120 CE), this has significantly changed, and reference in the opening dating formulae is made (1) to the consulship of Lucius Catilius Severus and Marcus Aurelius Antoninus, (2) to the third year of Hadrian's reign, and (3) to the year since the province's creation: 'and (according) to the counting of this province, on the twenty-fourth of Tammuz, year ten and five (=15), in Maḥoz 'Eglatain' (ll. 1–2) (ועל מנין הפרכיה דא בעשרין וארבעה בתמוז שנת עשר וחמש במחז עגלתין).

⁸ See Lewis (1989: 27–8) for details: examples of documents from Judaea include P. Murabba'at 115 (125 CE) and P. Murabba'at 114 (171 CE(?)), both of which date by regnal and consular year.

Additionally, P. Hever 12 has its date at the end of the receipt, a format more similar to Greek receipts (for example, P. Hever 60) than the Aramaic documents from the Judean desert.

Such dating changes seem nothing more than a necessity. Continuing regnal dating was not possible since there was no longer a Nabataean monarch. In light of this, dating by some kind of reference to Roman rule was probably the simplest option. Indeed, as in the case of the governmental tax, the provincials seem to have simply substituted the Romans for the Nabataean king, with little further adjustment to their documents' format or their legal transactions. Dating formulae may also have been part of the detail that was left for the scribes to determine, and so tell us little about whether the parties themselves were actively adjusting to and accommodating their new rulers' administrative forms. At best, the formulae indicate an awareness within the community of the presence of their new Roman rulers.

This seems to be the sum total of Roman influence on the format of these documents. Since they do not appear to exhibit the same kind of diversity in legal formulae or traditions that we find in the Greek corpus, language then becomes the key issue that remains to be explored. Several explanations may be offered for the commissioners' decision to continue to have their documents written in Jewish Aramaic and Nabataean in the Roman era. Once again, many of these factors could have operated in tandem, and it is highly unlikely that there was one single reason that explains the use of Jewish or Nabataean Aramaic in every case.

First, it is possible that these people were simply operating in default mode. Their own native language was Aramaic, and so they may not have even considered having their document written in Greek at this time. Perhaps this was influenced by their access to particular scribes. Access to trusted Greek writers might not yet have been widespread,⁹ and so people may simply have continued to rely on existing and previously used contacts. Essentially, they might have continued to fall back on the networks of trustworthy Aramaic writers they had always employed.

⁹ P. Hever 12 is the obvious exception to this, since it is the last dated document in Salome Komaise's archive. By this point, she certainly had access to a Greek scribe if she had wanted to employ one.

Along the same lines, it is possible that the people who commissioned these documents simply did not ever expect them to be used in a Roman court and so saw no need to have them written in Greek. This might have been because they preferred to use a local legal forum or because the situation in which the document was drawn up gave them no reason to think that they would ever need to go to court. This could apply particularly in the case of a marriage contract, such as P. Yadin 10, or a sale between, presumably trusted, family members—for example, P. Yadin 8. This is not to say that nothing could or did go wrong, just that because of the people involved or the nature of the agreement, the parties did not expect it to, and therefore saw no need to go to any great lengths to take account of or impress their Roman rulers. Notably, though, Babatha's loan to Judah (P. Yadin 17, 128 CE), transacted through a deposit, was written in Greek. If that does indicate that recourse to the Roman authorities was being left open, then obviously some family members were more trusted than others.

It is also possible that people had not yet come to realize what would help their case in a Roman court; the information, or 'messages', about the court had not yet been widely disseminated, or not yet reached these people in particular. This is especially plausible if the people in question had previously had little or no contact with the Roman authorities. They therefore simply stuck to the language and forms which they knew and had previously used.

Another factor may have been trust. In going to a scribe who wrote in their native language—perhaps someone they had used before or who was otherwise already known to them—the parties may simply have been choosing to deal with a person in whom they had confidence. This might be a particular concern if one or more of the principals were illiterate. Familiarity could have been perceived as a bonus.

The next option is that there was a preconceived idea about how certain contracts were drawn up, particularly if this was connected with religious, ethnic, or some other group identity in some way. P. Yadin 10 is the crucial document here, as was raised in Chapter 2.¹⁰ It is possible that tradition or even 'religious' considerations determined how Judah and Babatha drew up this particular contract. Alternatively, Judah may simply have copied a previous marriage document in order to save money. These issues are most evident in

¹⁰ See Chapter 2, pp. 68–70.

P. Yadin 10, although it is, of course, perfectly possible that they applied to other documents as well.

Finally, it is worth stating the obvious: different people within a community may have come to different conclusions about what they could, should, or wanted to do. There may even be a generational divide in evidence here, so Babatha's father chose to draw up his deed of gift in Aramaic, while Babatha and her contemporaries preferred to take the Romans' expectations into greater account in their choice of language and format. In any case, the motivations suggested above probably all played some role in the decisions of people about their documents, influencing one agent or another more or less at different times.

This final point is key: the importance of people's agency on the creation and operation of the documents should not be underestimated, especially within a community in which people had different levels of legal knowledge and awareness. Hence one might have chosen to take strong account of the Roman presence, another might not. The result is a far from uniform collection of contracts and laws.

THE POINT OF CHANGE

Undeniably, however, there is a marked shift in language in the Babatha archive in particular—that of Salome Komaise does not display such a definite move from local languages to Greek. This occurs at some point between 122 and 124 CE. What happened at this time to encourage Babatha and her family to start to commission not just a few, but all but one (P. Yadin 10) of their surviving documents in Greek?

The first document which was written as part of this seemingly permanent shift into the Greek language is P. Yadin 11, a loan on hypothec that Judah takes out from the Roman centurion Magonius Valens. This is not the original document, but a copy, as evidenced by the fact that Judah's acknowledgement is written in Greek and marked as a translation.¹¹ The fact that a Greek copy was drawn up is significant, and strong Roman influence in the presence of the centurion probably accounts for the language choice. Judah was

¹¹ P. Yadin 11, ll. 29–30.

also in the inferior position in this contract since he was the one in need of money. If offered a copy of the contract, he may have had little or no choice about the language in which the copy was written.

The next documents are of a slightly different nature. P. Yadin 12–15 all concern Babatha's dispute with the guardians of her orphan son Jesus from her first marriage. The first, P. Yadin 12, written in 124 CE, is an extract from the minutes of the *βουλή* at Petra, in which the two guardians are appointed. The ensuing disputes are then all written in Greek, as are all the rest of the documents in the archive. This exchange represents Babatha's first recorded encounter with the Hellenized/Romanized authorities in their official capacity.¹² Because the original transaction (the appointment of the guardians) was conducted, or at least recorded, in Greek, this may have influenced her choice to commission a response in the same language. Her shift to Greek, at least in this initial encounter, may, therefore, have been less due to active or enthusiastic choice and more perceived necessity.

It is also notable that we have no record of her choosing to have the *βουλή* appoint guardians, and it is entirely possible she had no input into this decision. If so, she had little option but to take her case to either the *βουλή* or the Roman governor's court. The latter course, which she actually took, might have represented an attempt to take her plea to a higher authority, which she believed had the power to overrule the *βουλή* decision. It was not necessarily an enthusiastic recourse to Roman courts but the only option if she wished to challenge the repercussions of the decision by the Petra *βουλή*.

Additionally, this first point of contact with the Roman governor's court in all probability increased Babatha and her family's awareness of the Roman administrative system, as well as their knowledge of the way it functioned. This was the turning point after which they decided to draw up their documents with the Roman authorities more firmly in mind—previously, none of the archive documents appears to have been formulated with a view to their being used in the Roman court system. Aside from the move to the Greek language, one further example of this is the inclusion of male guardians as representatives of women in these Greek documents: Hannah Cotton has argued that this is, in fact, the strongest indication of

¹² By 'official capacity' I am excluding transactions such as the aforementioned loan (P. Yadin 11), which appears to have been a private arrangement between the two parties.

such an intention to use them in a Roman court of law, particularly when contrasted with the absence of guardians from the Jewish and Nabataean Aramaic papyri.¹³ This feature of the Greek papyri suggests that members of this community had learned of Roman requirements regarding guardians for women, I would suggest through Babatha's personal experience, and thereafter followed them when drawing up their documents, even those which were not to be submitted directly to a Roman court.¹⁴

Once she had been forced to have recourse to Roman legal procedures, Babatha was more astute in making her documents 'user-friendly' to Roman officials. This attitude affected even those papyri which were not immediately or directly intended for the eyes of the Roman administration. The shift to Greek and the changing format of the documents therefore become more explicable in terms of Babatha's own experience in her legal transactions.

THE GREEK DOCUMENTS

We now turn to similar matters in the Greek documents of the corpus, namely language choice and the inclusion of particular legal formulae. The latter is a more complicated matter in this part of the corpus than in the Jewish Aramaic and Nabataean papyri, since the Greek documents include the most complex and varied contracts in terms of legal phraseology. These two issues provide the focus of this discussion as they are both readily identifiable elements in which definite choices were involved. Thus, by examining the reasoning behind these choices, we begin to map out the effect the Roman presence had—or indeed did not have—on the legal culture of the community or, more specifically in this chapter, the actions and ideas of the parties themselves.

¹³ Cotton (2007: 247).

¹⁴ P. Yadin 22, for example, is a 'sale' of a date crop (the nature of this transaction is disputed, see Chapter 1, p. 53, n. 96 for bibliography) in which Babatha acts through a guardian, John, son of Makhouthas. The document does not seem to have been drawn up with the direct intention of submitting it to a Roman court but I would suggest that the use of a guardian and the choice of Greek language show that the principals were now keeping in mind Roman preferences, even in their private transactions, in case it ever needed to be used in such a forum.

Language Choice

The very fact that the principals chose a scribe capable of writing in a language in which they themselves were not fluent implies that they thought language was in some way important. Moreover, the desire to have a document written in a specific language might influence various decisions that would be made by the parties, and would have a consequent impact on the end form of their documents. This could have included the decision to use a scribe in the first place, and might even have determined which writer the principals chose to approach. Through such choices, the commissioning parties could exercise a fair amount of influence over the language in which a particular document was written. The questions that remain to be addressed are why they thought the language of a document was so important, and how they ultimately made their decisions about which language should be employed. And finally, what assumptions about the way law operated does all this convey to us?

Language of Response

The first possibility is that provincials simply responded in the language in which they were originally addressed. This applies particularly to the case of Babatha's disputes with Jesus' guardians. Since the original appointment by the Petra βουλή was recorded in Greek, Babatha may simply have decided it was appropriate to make her own challenge in the Greek language.

Language as a Status Marker

It is also possible that language was in some way connected with status. Indeed, in Egypt, Greek was notably the language with the highest status and, in the Ptolemaic period, people may have chosen to sign their documents in Greek simply to 'demonstrate knowledge of the language of the higher classes'.¹⁵ Use of a particular language might, therefore, be a kind of prestige marker.

¹⁵ Depauw (2003: 80); see also Fewster (2002: 224) on language status in Egypt. A related situation, in which different languages are accorded various statuses, is what linguists term extended di- or triglossia. One language is used for H (high) functions, such as for formal writing or in public situations, another for L (low) functions, often in private spheres, within a community. The mark of this is that the functions are

Bernard Spolsky's 'preference rules' for language choice in multi-lingual Jewish communities in the first century CE can help frame the discussion here. These preference rules are 'rules that apply typically but not necessarily, and the weighting or salience of which is dependent on situations and attitudes'.¹⁶ In other words, these are general principles that might help us to understand the decision-making process behind language choice, but should of course always be applied with careful attention to the specific context of each case. Of particular relevance to the current topic is Spolsky's *Typicality condition* 5:

[You] Prefer to use a language that asserts the most advantageous social group membership for you in the proposed situation.¹⁷

In such circumstances, people choose to employ the language of the 'dominant group', 'as a claim to membership of that group and so to an advantageous status in the current situation'.¹⁸ Language choice then becomes a bid for power and status.

Now, I am not suggesting that the litigants' decision to use Greek amounted to an assertion of membership of the Roman ruling elite. But by means of such a choice, people might have wished to signify a supposed connection with or allegiance to the Romans. Such an affinity would not be signalled by the use of indigenous languages. The reasoning behind this would be that the ability to operate in the language of their rulers conferred greater favour or prestige on the parties involved, since they were both able and willing to engage with the Roman authorities on their terms and in their preferred tongue—at least, as far as possible, in that the locals did not employ Latin. Using a local Aramaic dialect, in contrast, signalled their deficiency and therefore marked their exclusion from their rulers' world. It placed them firmly among the 'ruled'. Consequently, language choice would have become a way of advertising one's own social status in the hope of being treated more favourably in any consequent legal proceedings.

rigorously compartmentalized (Mullen (2012: 24); see also Langslow (2002: 26) for concise definitions of both 'diglossia' and 'bilingualism'). It is not entirely clear that we have a di- or triglossic situation in these documents, since the fact that different languages are used for similar functions within the archives itself merits debate. The term does, however, serve to highlight the fact that one dialect or language might have a higher status than another.

¹⁶ Spolsky (1985: 44).

¹⁷ Spolsky (1985: 45).

¹⁸ Spolsky (1985: 46).

Language Determined Law

The next possibility is that the principals thought that language dictated law. Their decision to have a contract written in Greek, the language of the administration, would, therefore, be said to indicate that they wished it to operate under Roman law. Here, in the litigants' minds, language becomes the ultimate determinative factor of legal system.

Several points speak against this. The first is provided by comparison with Egypt. In the early Ptolemaic period, language was indeed strictly indicative of 'law' in the sense that it determined which court would hear a case: disputes among Greeks went to a Greek court and involved Greek documents; disputes among Egyptians went to the Egyptian board of *laokritai* and involved Demotic documents.¹⁹ Yet this rigid categorization was already beginning to break down as early as the second century BCE and the use of Demotic then gradually declined in the Roman period. The important point to note is that this did not equate to an obliteration of Egyptian traditions: Demotic documents continued to be written for a century after the Roman conquest,²⁰ and we find references to the 'Law of the Egyptians' well into the second century CE.²¹ The latter is admittedly an extremely complicated issue. This 'law' is referred to in six papyri and appears to have allowed fathers to have their daughters' marriages dissolved and revoke wills made by their sons in order to inherit their property. Yet despite the name:

The '*nomoi* (laws, customs) of the Egyptians' . . . did not actually represent the indigenous law of any specific social or ethnic group. 'Egyptian' was the generic and dismissive Roman term for everything in Egypt that was not Roman and not strictly Greek, narrowly defined as belonging to the sphere of the Greek cities. 'The Egyptians' were all Egyptian provincials living outside the three (and later four) Greek *poleis* of the province.²²

¹⁹ Wolff (1970: 37–50), cited and discussed by Yiftach-Firanko (2009: 546–8), who gives an excellent summary of the Egyptian situation and its development. More generally on the linguistic and legal situation in Egypt, see Kelly (2011: 24–5, 28–31) and Fewster (2002: 224–6).

²⁰ On the 'demise of the Demotic document', see Lewis (1993), Muhs (2005), and Yiftach-Firanko (2009).

²¹ See Yiftach-Firanko (2009: 543; 550–2) on the 'Law of the Egyptians'.

²² Dolganov (forthcoming: 6). See also Yiftach-Firanko (2009: 551): the 'Law of the Egyptians' was 'a collection of local practices of different ethnic backgrounds'.

Essentially, the 'law' was a composite, whose regulations did not derive truly and entirely from Egyptian practice but combined Egyptian and Greek traditions. But, for our purposes, the important point is that Egyptian traditions/law were in there somewhere or were thought to be, and that the Romans somehow perceived this as indigenous law and litigants cited it as such. Even the preservation of the title of the 'law' in *Greek documents* implies that those involved did not think that language alone strictly indicated law in the Roman era. One could appeal in a Greek document to what was labelled and therefore presented as an 'Egyptian' tradition.

A second factor also belies the idea that the principals thought law was determined by language (as opposed to whether it really was or not): this is the multiplicity of legal traditions and influences in the Greek documents. We find two kinds of mixtures in the papyri. The first entails the mention of one kind of law or custom coupled with the use of a legal formula from another. This occurs, for example, in P. Hever 65, Salome Komaise's marriage certificate, where an explicit reference to *ἑλληνικὸς νόμος* is coupled with a Roman *stipulatio* clause. The second kind of mixture of laws involves a contrast between, to adopt Jacobine Oudshoorn's terminology for the moment, 'substantive' and 'formal' law.²³ This occurs when a document appears to have been drawn up with one legal 'system' in mind but adopts the format of another. An example might be the series of papyri recording the disputes before the governor over Judah's estate: the complaint seems to have been based on a claim rooted in non-Roman law, though the documents appear to be intended for a Roman court and therefore employ a format appropriate to the intended forum, with the parties summoning and depositing in accordance with the *παραγγελία* procedure.

These two kinds of combinations can also be found within single documents. P. Yadin 18 is an obvious case in point: Greek, Roman, Demotic, and Jewish parallels have been identified for various clauses and items in this marriage contract,²⁴ and indeed there is an explicit

Yiftach-Firanko's (2009: 552) conclusion that 'The law was a manual composed for the use of Roman judges' is, however, less convincing: see Humfress (forthcoming: 2, n. 4) for comments.

²³ Oudshoorn (2007: 195–204, especially 196).

²⁴ Many of these parallels are discussed in the case study of the marriage documents (see Chapter 1, pp. 38–48); the pledging of all possessions as security for the

reference to *ἐλληνικὸς νόμος* at one point. Furthermore, the ‘substantive’ law behind the document has been a matter of much dispute, with champions for both Greek and Jewish frameworks. The principals do not, therefore, seem to be under the impression that the choice of a language has automatically put them under the framework of a particular legal system, Roman or otherwise. Further instances of a mixture of clauses or influences from various legal traditions abound: two examples are P. Hever 63, which has been compared to Greek *διαλύσεις* contracts but also contains a Roman *stipulatio* clause, and P. Hever 65, Salome Komaise’s marriage contract, whose legal background has prompted as much debate as that of P. Yadin 18.²⁵ All this rather undermines the idea that the parties assumed language was strictly determinative of law: they were quite willing to engage with a number of ‘laws’ within Greek documents.

On a final note, it is worth pointing out that Jacobine Oudshoorn has previously discussed this assumption, with a particular focus on P. Yadin 18.²⁶ She suggests that, if language was determinative of law, there was no need for the reference to *ἐλληνικὸς νόμος* in this contract: the employment of the Greek language should have made the legal context clear and meant that it did not need to be stated. This is compared with P. Hever 64, a Greek document in which a gift is made in an extremely similar manner and which employs very similar terminology to that used in comparable Aramaic contracts (for example, P. Yadin 7). Oudshoorn uses these cases to argue that, ‘Instead of focussing on language in the discussion, internal evidence should be considered to see whether this indicates what law was thought applicable to the document.’²⁷ I would agree to a large extent, but stop at her emphasis on the internal evidence as the primary, if not sole, indicator of applicable law: because of the involvement of

dowry is the element that has been compared to Demotic marriage contracts (see Cotton (2002b: 137)).

²⁵ P. Hever 65 has been aligned in structure to a *ketubbah*, though makes reference to feeding and clothing the bride, ‘in accordance with Greek custom and Greek manner’ (νόμ[ω] [ἐλληνικ]ῶ καὶ ἐλλ[η]νικῶ τρόπῳ) (ll. 9–10) and concludes with a *stipulatio* clause. For more detailed discussion, see the case study of the marriage contracts in Chapter 1, pp. 38–48.

²⁶ Oudshoorn (2007: 84–7).

²⁷ Oudshoorn (2007: 87). Oudshoorn does not, in fact, think that P. Yadin 18 is drawn up entirely according to *ἐλληνικὸς νόμος*, but argues that this refers only to the maintenance clause and the contract as a whole came under Jewish law (Oudshoorn (2007: 398–422)).

people beyond just the parties themselves, I would suggest that personal interaction and responses must also be taken into account as far as possible.

*The Romans Required or Preferred That
Documents Be Written in Greek*

There is, of course, a marked difference between requirement and preference. Nevertheless, these two considerations are closely related and raise many of the same issues, so are worth examining in close succession.

First, did a document have to be written in Greek in order to be valid in a Roman courtroom? This differs somewhat from *Language-determined law*, as it does not assume that a certain law is applied. Instead of legal system, the discussion centres on legal forum.

Oudshoorn has again done much work in demonstrating that the Romans did not, in fact, require documents to be written completely in Greek. She points out that Aramaic dialects still had an active role in legal contracts, as they were frequently used in subscriptions to Greek documents.²⁸ No fewer than eight of the Greek texts from the Babatha archive have Aramaic subscriptions in the form of attestations by one or more of the parties involved; two more are preserved in Greek translation.²⁹ In addition to this, principals across both archives often sign their name in Jewish or Nabataean Aramaic. That it was common for the principals and witnesses in this community to sign or endorse Greek documents in their native language appears to be beyond question.

Furthermore, Oudshoorn argues that Babatha bases her right to sell the date crop in P. Yadin 21 and 22 on the privileges bestowed in her *ketubbah*.³⁰ She claims to have taken possession of the date

²⁸ Oudshoorn (2007: 84). She contrasts this with the situation in Egypt, in which Demotic is often used to write the main body of documents but the subscriptions are written in Greek.

²⁹ P. Yadin 15, 17–22 and 27 have Aramaic subscriptions; P. Yadin 11 and 16 preserve Greek translations of subscriptions which were presumably originally written in the indigenous languages. In the Salome Komaise archive, we more commonly find lists of Jewish or Nabataean Aramaic signatures than attestations by the parties (see P. Hever 60, 62, 64), though P. Hever 61, the conclusion of a land declaration, preserves the translation of three subscriptions.

³⁰ Oudshoorn (2007: 77, 89).

orchards in these two Greek documents based on her entitlement to the return of her 'dowry and [her] debt', which Oudshoorn assumes is a reference to her *ketubbah* money.³¹ P. Yadin 23–6 record the ensuing conflict about the legality of this move, but Babatha at least, on Oudshoorn's reading, assumes that her *ketubbah* is absolutely legally binding, even in a transaction that takes place by means of a Greek document. This strongly suggests that there were at least some people who did not think that there was a clear separation of jurisdictions based on language. Whether this belief was correct was, of course, another matter—it remains to be seen whether a Roman court really would have taken action based on native-language documents. But, for the moment, we should acknowledge that Babatha at least does not appear to have thought she could not make a transaction in a Greek language document based on rights laid out in an Aramaic one.

Finally, when there was a required language for certain documents, this was actually most likely to have been Latin.³² Roman citizens, for example, had to write their wills in Latin until 235 CE.³³ But, of course, this was only going to be a concern for citizens: citizenship was a requirement to make a will according to Roman legal principles, and so a Roman testament—and the requirements for formulation it involved—was simply not a concern for peregrines.³⁴ Indeed, most acts transacted by non-Roman citizens such as Babatha, Salome Komaise, and their associates probably could be more flexible with regard to language by the period in question.

Yet we might wonder how firm a line should be drawn—in both the Romans' and the parties' minds—between a requirement and such a strong preference for a specific language that, to all involved, it amounted to a necessity. In the face of such a strong linguistic

³¹ P. Yadin 21, ll. 11–12; P. Yadin 22, l. 10.

³² See Oudshoorn (2007: 64–6) for a discussion of the use of Latin. She concludes that 'although Latin was the preferred language for legal acts, foreigners could use their own language for acts within the *ius gentium* from an early stage onwards' (citation at 66).

³³ See Yiftach-Firanko (2009: 553) for comments on this <requirement> in Egypt.

³⁴ Non-citizens lacked *testamenti factio* and so would not have been able to participate in making a Roman testament in any way, not even as a witness. Though we might note that copies of the *actio tutelae* (P. Yadin 28–30) were still found in Babatha's purse despite the fact that, in strict terms of Roman law, she had no right to use it.

preference, would anyone really actively choose to ignore it and thus take the risk of annoying the people to whom they were turning for justice? And, indeed, there can be no doubt that the Romans would have preferred to deal with Greek documentation. The governor and his staff were hardly going to be able to speak or read local dialects in every location to which they were posted, and a Greek document would naturally be more immediately accessible to them. One might wonder about the chances of success for a petitioner who dared to present his case solely in a native language: one or two documents might be understandable, but even then it would probably be wise to have these translated before submitting them. Provincials must have realized this fairly quickly and may even have assumed it from the start: the Roman officials were representatives of a foreign power, a 'foreignness' which was connected with and even reinforced by the non-indigenous language they used.³⁵ Provincials such as Babatha could, therefore, have reasoned that it would do no harm to have documents that could come before Roman eyes written in Greek.³⁶ It might even stand them in good stead with the Roman authorities, since the litigants were obviously taking the trouble to appeal to the Romans on their own terms. Language choice was part of a wider process of flattery and appeal.

It is worth briefly reconsidering here the use of *Language as a status marker*. Under this interpretation, I suggested that the principals' motivation for writing in Greek was that they believed the Romans would be inclined to accord higher social status to those who had mastered the Greek language and could conduct their legal business in it. The litigants believed that they were showing an affinity with a culture closer to that of the authorities and would be viewed as more 'civilized' as a result. They therefore used the Romans' preference for the Greek language to their own advantage, employing it in

³⁵ This foreignness might even have been cultivated by the Romans in order to reinforce their power. Kelly (2011: 179) observes that the use of Greek in court, a language which only some people in a multilingual society (in this case, Egypt) would have understood, added to 'the majesty and terror of the occasion'. See also the comments of Harries (2012: 792–3) on the long survival of the Latin language of law in the eastern empire, which 'must long have outweighed its practical usefulness': 'That Latin survived so long as the language of power in an alien cultural environment is tribute to the tenacity of Roman legal and administrative tradition' (at 793).

³⁶ Little is known about translation processes but if the litigants themselves had to pay for translations, should they be needed for a Roman court, having the document in question written in Greek in the first place would save both time and money.

their documents in the hope of being cast in a more favourable light in Roman eyes. All this is part of a high-stakes game, in which the parties, if they were shrewd, did what they needed to in order to impress their lords and masters and, ultimately, win.

Language, then, was in no way determinative of law used. Nevertheless, it has become apparent that it was indicative of the authorities whom the litigants intended to approach if problems arose. The Greek language, therefore, becomes a mark of awareness of the Roman presence and potential recourse to Roman courts.

Legal Formulae and References

The inclusion of specific legal formulae, or explicit references to certain 'laws,' is another of those points that can and should be considered in terms of 'situated' or 'localized' legal actions in practice. While certain clauses may reflect widely used forms, they are employed in individual documents with a very specific intent and in each case we should try to think about what that intent was. How did people think about the technical terms, phraseology, or specific references that ended up in their documentation? Did they think about them at all?

Lest I risk claiming that we can assert the parties themselves chose these formulae or references, I should point out again these are the result of the collaboration between party and scribe and/or advisor. In terms of whether or how the parties would have known about such legal phraseology, this possibility should not be dismissed out of hand, even if they truly were unable to read their documents. Legal language is not always confined to the legal realm and can and does travel into 'everyday' discourse. But beyond this, the parties did have an agency to exercise, and thus had an effect on how the end form of the documents turned out. First, they picked their writer or advisor in the first place, and that choice could have a multitude of consequences depending upon who was employed (as discussed in Chapters 2 and 3). Secondly, they could and probably would give instructions to their writer or advisor about the nature of their complaint or the transaction they wanted to perform. Additionally, even if the principals were illiterate, writers could read back or orally translate documents for them, and so they would presumably have at least been aware of the legal phraseology contained within the papyri

and have had some underlying assumptions about what force or effect these had.

As such, I am not proposing that the parties themselves were certainly responsible for the inclusion of these references or would have asked the questions I shall pose about legal formulae or law in the following section (pp. 125–9). But that does not mean that they would not have had any underlying conceptions or assumptions about the way the documents and legal language in general functioned. It is these ideas that are worth considering further.

Concepts of Law

Before moving to the legal formulae themselves, we must first consider what is meant by ‘Roman law’ (or indeed any ‘law’) in this particular context. This is a key area of contention in the study of law in the provinces. We need to consider the practical application of the law and the way in which it was conceived by provincials and rulers alike. This is an immense topic, and only the bare bones of what is particularly useful to the interpretation of these archives will be dealt with here: anthropologists and sociologists have been debating the ‘What is law?’ question for over a century, and I shall not claim to make any attempt to tackle it. Rather, two general principles can be set out that are helpful in guiding any attempt to sketch the parties’ attitudes towards their documents or to legal language more generally. These two principles are as follows: (1) the principals had a clear conception of law as containing definite regulations, but (2) this should be combined with the significance of situation, i.e. of legal procedures as ‘situated practices’, which are ‘locally shaped and culturally entwined in place and setting’.³⁷

This view of law and legal procedure has grown out of the advances in this subject that were laid out in the ‘Introduction’, and emphasizes at all times the point of view of the parties involved, their agency and choices. This in turn leads to a more fluid idea of legal rules as dependent on the situation and agency of the people involved in each particular case. Yet people did believe that there were rules to follow: fluidity in interpretation, reaction, and application did not mean that any idea of solid regulations was thrown out of the

³⁷ Seron and Silbey (2004), as cited in Humfress (2013b: 233).

window. Bryen's work on Egypt is of particular significance here: he argues that provincials there had a very clear and novel idea of the law as 'a disembodied world of rules that transcended even the emperor himself',³⁸ yet also saw law as, 'an evolving dialogue taking place in the courtroom and as a historically evolving phenomenon constructed from individual legal decisions and vested in documents recoverable from local archives and public inscriptions'.³⁹ In other words, people had an idea of what 'the law' was and sought to find out about it, apply it, and contend over it in court: a 'conversation' in a courtroom that was 'mediated through documents' came to reveal what petitioners at least believed were general, abstract 'principles of governance'.⁴⁰ But how these conversations played out might vary considerably depending on the locations and agencies involved.

A couple of examples will serve as illustration. The first is that of P. Yadin 25. It was noted in Chapter 1 that, in this papyrus, Julia Crispina, one of the guardians of Judah's orphaned nephews, summons Babatha for seizing property 'through force' (*βία*).⁴¹ Babatha then issues a counter-summons, recorded in the same papyrus, in which she complains that Julia Crispina has summoned her on a false charge of using violence.⁴² Reference to *βία* is extremely common in papyri from Egypt and is often used as rhetorical flourish in making claims.⁴³ Babatha is clearly not familiar with what is quite a standard turn of phrase, in contrast to Julia Crispina and/or her scribe.⁴⁴ We therefore have differing levels of knowledge and sophistication exhibited within a single papyrus. This in turn leads to legal wrangling over what would elsewhere have been considered a fairly standard rhetorical device. Local understandings, or misunderstandings, of legal phraseology here impact upon the course of a dispute.⁴⁵

Another case in point is the *actio tutelae* (P. Yadin 28–30), discussed at length in Chapter 3. These three papyri are vital in giving credence to the notion that people in this community had a defined idea of law as a body of rules. Babatha had gone to the trouble of consulting someone who knew about Roman law (or who she thought did), and

³⁸ Bryen (2012: 776).

³⁹ Bryen (2012: 801).

⁴⁰ Bryen (2016) *passim*.

⁴¹ P. Yadin 25, l. 10. This is omitted from the outer text of the papyrus.

⁴² P. Yadin 25, l. 18/51: *βίαν μοι χρωμένη συκο[φ]αντοῦσά μοι*.

⁴³ See Hanson (2005: 102) for details on its use and frequency in Greek papyri from Egypt.

⁴⁴ See Hanson's (2005: 102–3) comments.

⁴⁵ See also the discussion of this in Chapter 1, p. 55.

having them make several copies of something that was thought relevant to her case. The presence of these documents in her purse suggests that Babatha valued documentation and ownership of the written letter of the law. She had a conception of Roman law as a body containing definite rules, which she actively sought to learn about and apply to her own situation.

The translation and adaptation of a Roman formula also speaks for the importance of agency and location in the application and determining of these rules—in short, Caroline Humfress' idea of a more socially situated law. So when Babatha consulted the writer about her situation, he copied out for her something that he thought appropriate. Yet somewhere in the writing of P. Yadin 28–30 there appears to have been an ignorance of the regulations covering guardianship, or a lack of access to them, or a belief that a formulation which 'looked Roman' would do. This raises a further question: how would Roman judges respond to such an adaptation—would it have been accepted, reinterpreted, or ignored?

The provincials in this area therefore seem to have had an idea of Roman law as a body of rules and possessed a desire to find out what these were. These rules, however, had to be interpreted and applied. This process may have resulted in a situation in which 'the rules' did not have one universally apparent and understandable meaning, and so were not necessarily as rigid or constant as we might want to think when it came to their practical application.

Attitudes towards the Legal Formulae

The above sketch of ideas about law might help when considering the attitudes of the principals to legal formulae, formats, and references more generally and could help to explain why the specific legal formulae were used when they were. Like language, in some way the formalistic elements were obviously considered important—otherwise, why include them in the first place? The question that remains is what force or effect such phraseology was believed to have possessed.

The three potential attitudes I shall lay out below are by no means mutually exclusive. Different people may have had different opinions about the legal force of the formulae, they may have sat somewhere between two positions or have been unsure as to their exact function,

simultaneously considering all three reasons and employing the relevant legal phraseology 'just in case'.

a) Informative

The first possibility is that the provincials viewed the legal formulae as informative in function. They therefore thought it would help the Roman authorities to understand the issue at hand better if Roman legal terms were used. Writing contracts in local formats, on the other hand, could make the matter more opaque. So, to take one example, in P. Yadin 17, Judah acknowledges a loan he has taken out from Babatha, his wife. The loan is written in Greek in the form of a deposit, a familiar contract from the Roman legal sphere which was widely adopted and adapted throughout the empire. Under this interpretation, the selection of this particular form would be to enable any Roman administrator or judge to view the transaction under a familiar frame of reference, rather than having to interpret the terms of a loan drawn up according to local norms.

b) Persuasive

The principals may have used Roman or Romanized legal formulae because they believed that it would increase the probability of the Romans returning a favourable verdict. Their use of such terms therefore becomes a means by which they may impress their Roman judges. This is, indeed, Jill Harries' interpretation of the documents:

The villagers of Maoza were not Roman lawyers. Their adoption of the language of Roman law did not imply understanding or appreciation of its content. Rather, they hoped to impress the men of power with whom they were obliged to deal.⁴⁶

I admit that the separation of this view from the former is potentially false, as the two are very closely connected. A desire to inform one's judges on their own terms is naturally bound up with the hope that this will help achieve a verdict in one's favour, should the problem come to court. Both viewpoints may also combine with the issues raised in the discussion of language choice, namely that provincials might have chosen to have their documents written in Greek because they believed this was the language preferred by the

⁴⁶ Harries (2010: 96).

Romans. These concerns all fall within the concept of a kind of legal, even in some ways ‘diplomatic,’ language which parties could employ in the legal process to make their claims both comprehensible and convincing.

c) Transformative

Seen from the perspective of the individual actor, then, specific Roman legal forms might be used in particular circumstances to transform an everyday occurrence—the making of a promise, the offering of a loan, a gift of property—into something that could then be viewed (plausibly) as a Roman ‘legal’ act.⁴⁷

The provincials may have believed that using Roman or Romanized legal forms transformed their deeds into a Roman legal act. This is a stronger reading of the parties’ perception of the force of the formulae, which are now believed to determine the law used. Humfress (quoted above) suggests that the employment of the *stipulatio* clause in Greek contracts from Egypt in the third century CE is a possible example of this phenomenon,⁴⁸ and the use of *stipulatio* in these two archives might also be considered under this interpretation. To take the same example again, this interpretation would mean that when Judah, or rather the scribe he commissioned, placed a *stipulatio* clause at the end of P. Yadin 17, he believed that he was thereby placing the entire transaction under Roman law. This would similarly apply to P. Yadin 18, Shelamzion’s marriage certificate, with its vast mixture of legal references: in some sense, the principals thought that this *stipulatio* meant the contract became enforceable in a Roman legal forum.⁴⁹

Authority or Law?

In all these potential attitudes towards both language and law, the key underlying factor has been a concern on the part of the principals with the requirements, preferences, and perceptions of the Roman

⁴⁷ Humfress (2011: 38).

⁴⁸ Humfress (2011: 38). Humfress also cites the *Tabula Contrebiensis* (first century BCE) as a further possible example, in which two Roman legal formulae precede a judgment that bears no relation to Roman law.

⁴⁹ The other documents which contain a *stipulatio* in these archives are P. Yadin 20 (a concession of rights), P. Yadin 21 and 22 (‘purchase’ and ‘sale’ of the same date crop), and P. Hever 65 (Salome Komaise’s marriage contract).

authorities:⁵⁰ to return to Galanter's words, with the 'radiating effects' of the presence of the Roman court. The notion that has been posited of a 'legal' or, to use a broader label, a kind of 'diplomatic' language used to increase one's chance of success in the legal process accentuates this: the principals' primary concern was with creating an effective appeal to an authority and not necessarily with selecting a particular 'system' of law.

Indeed, this whole notion of 'systems' to which specific rules belonged may be an anachronistic attitude to associate with ancient society when considered from the perspective of the provincial litigants themselves. As Kantor has so succinctly put it:

It is confidently asserted in respect of modern law that 'every law necessarily belongs to a legal system'. Whether that can be said of law in Roman provinces must be in doubt.⁵¹

This is, of course, not to say that people in the provinces had no conception of Roman law as a body of rules or, for that matter, of any other kind of law that they encountered—as I have argued, it seems probable that they did have some kind of notion of law in these terms. Rather, this was not their primary concern or motivation behind seeking to find out about and apply specific legal formulae. Instead, I should like to suggest that they thought more immediately in terms of imposed authority and available legal fora. Seeking out certain legal formats and selecting a specific language were a way of appealing to these authorities.

If this is the case, we must explain the mention of other legal traditions in the documents: among them, reference to 'Greek law/custom' (ἑλληνικὴ νόμος)⁵² and 'Greek law and Greek custom' (νόμος [ω] [ἑλληνικὴ] καὶ ἑλλ[η]νικῶ τρόπος).⁵³ On the face of it, these seem to be explicit references to specific 'systems' of law and thereby, perhaps, indicative of the particular 'system' under which litigants wished their documents to operate. Nevertheless, I would argue that these can be interpreted within the suggested framework. These phrases should, therefore, be understood as allusions to precedent,

⁵⁰ See Cotton (2007: 247–55) for a further example: she discusses P. Yadin 15, arguing that various aspects of the documents make it clear that 'the aim was to make the contract legally valid and enforceable in a Roman court of law' (at 254).

⁵¹ See Kantor (2012: 80); his citation is Raz (1973: 1).

⁵² P. Yadin 18, l. 16/51.

⁵³ P. Hever 65, ll. 9–10.

tradition, or that ever elusive ‘custom’.⁵⁴ They are employed and phrased in such a way in order to impress upon the Roman authorities the embedded nature of the terms of the contract in the various practices that were in use in the local area. Essentially, they are saying: we are not doing anything wrong, odd, or unusual—we are just following the long-established norm.⁵⁵ These specific references are, therefore, part of the kind of processes of negotiation of power that Bryen has discussed:⁵⁶ a reference to rules or traditions which may then be fought over in the arena of a Roman court. Given the tendency of Romans to prefer local custom, scribes or advisors could have gathered enough about this attitude to conclude that very specific references to long-standing tradition or custom, even ‘law’, might make the parties’ claims stronger in the eyes of a Roman judge.

What, then, of such references in the non-Greek documents? I am here talking more specifically about the reference to ‘the law of Moses and the Judaeans’ in P. Yadin 10.⁵⁷ While this is not necessarily aimed at persuading a Roman audience of the embeddedness of the practice/‘law’ referenced, it does lend authority to the document that is written. Again, it claims to follow an old, ancient ‘norm’. The difference here from arguing that the reference is meant to place the document under a particular legal ‘system’ amounts to more than just semantics, and rests on our understanding of what ‘law’ was in antiquity. Essentially, I am arguing that ‘system’ is an inappropriate descriptor in this case in this particular era, when we are generally dealing with uncoded, un-unified bodies of ‘law’, that may—in the case of both ‘Roman’ and ‘Jewish’ law, when we consider the sheer geographic spread of the people who had recourse to both—have varied considerably from community to community. The important and consistent point is that this reference to tradition was fundamentally bound to an idea of authority.

⁵⁴ See Humfress (2011) on the role of ‘custom’ in antiquity and Kantor (2012: 67) on the ambiguous meaning of νόμοι.

⁵⁵ See Alonso (2013) *passim* on the Roman concept of law as authority rather than binding rules, but see especially his comments at 403: ‘tradition, for the Roman mind, carries authority, even when it is an alien tradition’.

⁵⁶ Bryen (2012: 776; 800). See also Humfress’ (forthcoming) interpretation of the reference to ‘The Law of the Egyptians’ in P. Oxy. 2. 237, col. vii, l. 33 (c.186 CE), which, she argues, ‘tells us more about his [the litigant’s] determination to triumph over his daughter, than it reveals about the persistence of Egyptian law and legal practices in late second-century Roman Egypt’ (Humfress (forthcoming: 19)).

⁵⁷ P. Yadin 10, l. 5: כדאי משה יהיה דאי.

This is where it becomes more useful to understand the parties as operating in a context more concerned with authorities and appealing to them than with systems of law. And 'authorities' is not necessarily confined to the Romans: indigenous embedded practices, or a religious figure, even a deity, may also be included within this idea. In the Greek documents, people's use of specific legal formulae or references to specific legal 'systems' is certainly often motivated by a desire to appeal to their Roman overlords. As part of this, they employ Roman legal terminology or reference other traditions in a way that is presented as authoritative in the hope that they will strengthen their legal claim.

Such a decision to frame one's claim in terms which (hopefully) would appeal to the Romans does not amount to an enthusiastic uptake of Roman legal processes. There is a marked difference between a decision to maximize one's chances in the courts by employing a certain kind of diplomatic, legal language of appeal and enthusiasm for a new legal system. For the time being, we may say that if Romans offered the only concrete, present institutions to which these people could appeal to uphold their legal transactions, or were perceived to be at the top of a hierarchy, then the safest option for litigants was to bear in mind their preferences. Awareness and knowledge of these preferences probably grew over time; hence the general shift from writing documents in Jewish Aramaic and Nabataean at the beginning of the Roman period to Greek later on.

This amounts to a case of having little choice but to conform if one wanted to capitalize on any chance of success, rather than an enthusiastic reaction to the ruling power and legal system. The idea that provincials keenly and voluntarily turned to Roman legal fora should, therefore, be tempered by considerations of the realities and necessities of their situation.

The Alternatives to the Assizes?

Evidence for local courts or tribunals in these documents is almost non-existent. Aside from a single reference to the *βουλή* of Petra, only the assizes are mentioned in the two archives. This could mean that, after the Roman takeover, no peregrine courts survived—a situation that certainly seems to have been the case in Egypt.¹ But lack of attestation does not mean that we should automatically rule out the possibility that localized legal fora, if not ‘courts’ in the formal sense, existed,² and it is possible that such fora may either have simply been ignored and taken for granted by the Roman administrators or have been altogether unknown to them.³ Such fora could have been a viable option for litigants in Roman Arabia, distributing a localized form of justice that was potentially more convenient, more familiar, and probably swifter than the Roman alternative. But how likely is it that they existed?

LOCAL TRIBUNALS: A SOCIO-ANTHROPOLOGICAL PERSPECTIVE

Just as health is not found primarily in hospitals or knowledge in schools, so justice is not primarily to be found in official justice-dispensing

¹ Alonso (2013: 352).

² There are situations where the documentary evidence does not reflect the existence of all the operative legal institutions. See Cotton (1993: 100): ‘The editors of CPJ expressed their surprise at the absence of any documents reflecting the existence of Jewish courts in Egypt and of the exercise of Jewish law there; not even for Alexandria where we know that a Jewish tribunal existed, do we possess any evidence.’

³ Cotton (2007: 236). The position is well summarized elsewhere by Cotton in Cotton and Yardeni (1997: 154).

institutions. People experience justice (and injustice) not only (or usually) in forums sponsored by the state but at the primary institutional locations of their activity—home, neighbourhood, workplace, business deal and so on (including a variety of specialized remedial settings embedded in these locations).⁴

Galanter here beautifully encapsulates the problem with focusing purely on official courts as the centres of justice in a given community: this is but a small part of the broader picture. Indeed, one of the consequences of the rise in multi-legalism or legal pluralism studies has been a move away from the purely ‘state-ist’ or centralist perspective of law. The term ‘law’ is not simply tied to the state: it can be applied to rules, norms, and customs that originate from other power sources. In short, and to generalize greatly, these studies have expanded the ideas of what constitutes ‘law’ to include studies of non-state legal orderings.⁵ There have been fierce critics of this approach—or, at least, of applying the term ‘law’ to such indigenous orderings—who argue that by adopting this perspective we are in danger of losing any sense of what ‘law’ is.⁶ Indeed, some of the most recent literature in the field has tended more towards talk of ‘normative pluralism’, of which legal pluralism is viewed as a subset.⁷ But whether or not we choose to include indigenous ordering within *legal* pluralism, what is vital to recognize in all this is that the phenomenon of non-state or non-governmental methods of resolving disputes is a widely recognized one in most historical periods and societies. These methods, rules, or arenas for resolution—be that adjudication, mediation, or arbitration—could have various relationships with what in the modern world we would label ‘the state’ though the terminology would probably have to be revised for antiquity. Local tribunals can today, for instance, be fully recognized and endorsed by the state; they can be recognized but not have their decisions enforced by state authorities; or they can operate entirely outside of state control,

⁴ Galanter (1981: 17).

⁵ See, for example, the concise formulation by Moore (1986: 15): ‘not all the phenomena related to law and not all that are law-like have their source in government’.

⁶ Roberts (2005) is particularly vehement on this point: he acknowledges the existence and importance of local indigenous orderings, but hesitates to call them ‘legal’ orderings. See Croce (2012) for a recent attempt to reconcile the two standpoints.

⁷ See Twining (2010).

recognition, or perhaps even cognizance. The last situation, though, does not in any way mean that the fora or mechanisms involved in these indigenous orderings would cease to exist.⁸

With regard to more modern eras, one frequently finds such extra-state tribunals among minority groups. The indigenous orderings among religious minority communities in Western, supposedly ‘secular’ states have attracted particular attention to the extent that ‘religio-legal pluralism’ or ‘religious legal pluralism’ is sometimes separated as a distinctive sub-strand within the broader field.⁹ Muslim minorities in ‘secular’ Western countries, for example, have provided a particular focus for such work, since countries such as Britain have given Muslim tribunals a fairly wide scope in which to operate.¹⁰ Certain communities—or, perhaps more correctly, certain members within a religious community—will seek to make and enforce judgments or settlements based on an alternative body of ‘law’ from that of the state. They often have their own orderings and fora to do so, separate from the official state-sanctioned courts. These tribunals have to have a certain degree of authority over their own communities in order to continue to exist and have any chance at enforcing their decisions.

It is the source of this authority, or the power structures behind such tribunals’ effectiveness, that may be relevant and even

⁸ For example, in Canada the 2006 *Family Statute Law Amendment Act* meant ‘family arbitration’ could only be used to refer to processes conducted under the law of Ontario or another Canadian jurisdiction; all religion-based arbitration would have no legal effect whatsoever. This was a significant change from the previous situation, in which state regulation of arbitration processes was minimal and so such religious arbitration might have fallen under the umbrella of ‘family arbitration’. And yet, ‘the enactment of the *FSLAA* did not mean that decision making based on religious precepts would not continue to be a reality within religious communities in Ontario. It was widely recognized that existing practices involving such decision-making processes would continue’ (Ashe and Hélie (2014: 160)).

⁹ These terms have most commonly been employed not necessarily by those who study the situation, but by critics of what is seen as its growing normativity in the Western world: feminist scholars, for example, have taken issue with state recognition of both sharia courts and Jewish courts for adjudication in family matters, since they argue that this effectively means the state is sanctioning discrimination against women in certain cases. See the criticisms in Ashe and Hélie (2014), who employ the term; see Wolfe (2006–7: 447–8, 460–6) for a summary of some of the arguments against religious legal pluralism; Reiss (2009) also considers some of the problems in the context of Muslim tribunals in Britain.

¹⁰ There is a wealth of literature on the situation of Muslim arbitration tribunals and mediations councils in Britain, for example: see Bano (2007) and (2009), the latter of which argues for an understanding of the situation in terms of ‘interlegality’, and Reiss (2009).

illuminating in considering the possibilities of indigenous orderings in antiquity. Note, for instance, the following comments on ‘community courts’, which are in this context non-state fora that provide religion-based adjudication:

The authority of such courts may flow from one or more of several sources: (i) community custom, according to which community members should resolve their differences before community, rather than state fora, adjudicating according to traditional religious law; (ii) their judges’ personal status or renown among community members; or (iii) the parties’ appointment of the tribunal as arbitrator.¹¹

None of these factors is entirely alien from the situation we find in many antique communities, and it is these kinds of power dynamics and authority bases that might help us to describe or think further about the situation in antiquity. In such situations, a minority group or some sort of local community has their own orderings, governed by their own authorities and power dynamics, which they may use—either by compulsion or freely—in order to resolve their disputes. The community itself does not have to be a ‘religious’ one, as in the literature mentioned here: it would be a particular village, association, extended family, or ethnic group. Each grouping would have its own power structures—village headmen, a ‘religious’ or ethnic leader, an elder in a community, or simply the person who was the wealthiest could be considered to have the greatest authority, or there might be more complex power structures or divisions of expertise at play. As discussed in the above quotation, if it were customary to take one’s issues to the communities’ own fora, then this social pressure could act as a legitimizing force for the existence of these fora and as potentially effective guarantees of the enforcement of its decisions.¹² This might even be more effective than going to an outside authority, whose standing and capacity to enforce its decisions within the local community might have been somewhat dubious.

But it should be emphasized that going to such a forum was not necessarily a ‘soft option’, not a more understanding, sensitive place

¹¹ Hofri-Winogradow (2010–11: 61).

¹² Consider, for example, the case of the Balinese villager, Regreg, who was essentially ostracized by his whole village for refusing to take up the position on the council that fell to him. Whether or not we consider this a ‘legal’ situation, it is an example of the community as a whole enforcing a council decision. See Geertz (1983: 175–81) for an account of the case.

in which to have a dispute adjudicated or settled. Local powers can be as harsh or corrupt as imperial ones, and local ordering perhaps stricter than the imperial alternative. Indeed, the fear of an unfair outcome in such a local order could be precisely the impetus to take one's case upstairs, as it were, to the imperial authorities.

THE POSSIBLE VENUES AND AUTHORITIES FOR ALTERNATIVE LEGAL FORA

Βουλαί and City Courts

One possible body that could have served as a source of localized justice in antiquity would be a city council (*βουλή*) or some other form of local court based in the cities of the empire. In general, the *βουλαί* seem to have had a prominent role in local government,¹³ as we would perhaps expect from such a large empire. Strong government by local elites alleviated what would otherwise be a huge demand for a relatively small number of officials from the central Roman administration. Local cooperation in governing was therefore essential. It would seem logical enough that such competencies should extend to justice administration too. Given the already large caseload of Roman governors, allowing local autonomy and strong local legal institutions would be an important way of alleviating their potential workload.

In the Republican era at least, communities generally seem to have been allotted a fairly high level of autonomy. Cicero bewailed the fact that Verres had taken away the rights of Roman citizens and Sicilians alike, who appear to have had a fairly strong system of city courts and laws, including regulations governing the selection of judges in individual cases.¹⁴ Cilicia also appears to have had its own courts during Cicero's time.¹⁵ As Hannah Cotton has already noted, these

¹³ Rogan (2011: 85) is one recent example of the prevalent opinion that local government was generally strong; Fuhrmann (2012: 66) also states that in Asia Minor the traditional *βουλή* retained much of its importance, 'supervising the overall maintenance of public order'.

¹⁴ Cicero, *In Verrem* 2.2.32.

¹⁵ Cicero, *Ad Atticum* 6.2.4: 'All have come to life again with the acquisition of home rule under their own laws and courts' (*omnes suis legibus et iudiciis usae αὐτονομίαν ἀεψταε revixerunt*). Text and translation are those of Shackleton Bailey (1968). See also Cicero, *Ad Atticum* 6.1.15 on Greeks using their own laws (*suis legibus*).

regulations are remarkably similar to those Augustus pronounces in his fourth edict to Cyrene, where Greek litigants are granted the right to have Greek judges, unless they explicitly opt instead to have the case heard by Roman citizens.¹⁶ Some allowance, on the Roman side, of local jurisdictions and competencies is, therefore, attested but we should remember this represents only situations where local courts are explicitly recognized by the Roman authorities. This does not take into account what might have happened below the Romans' radar on a day-to-day basis between peregrines whom they might have regarded as more 'barbarian' and less worthy of any recognition than their Greek counterparts.

Indeed, in spite of these attestations, knowledge of the exact competencies of local legal fora generally is much sparser than we would wish. Joyce Reynolds's comment, made in 1988, that 'There is much about which we could wish to know more . . . notably the local courts of justice',¹⁷ regrettably still holds true. Over twenty-five years on, what we do know is still extremely limited. Epigraphic evidence has brought a little more detail to the picture: for example, a fragmentary inscription published in 2005 attests to the provisions made for the reform of the local court system in Chersonesus Taurica in the imperial period, probably dating to early in Trajan's reign.¹⁸ This means Chersonesus is one of the few Greek communities in which it is confirmed that popular jurists continued to exist after the mid-second century BCE, 'when civic courts proper largely disappear from our epigraphic record'.¹⁹ Further evidence for local courts is provided by the municipal charter at Irni: while this seems to place severe restrictions on local autonomy,²⁰ in doing so it does at least attest that some form of local autonomy existed. We are, however, dealing with a *municipium* here, so self-governance is hardly a surprise. Aside from

¹⁶ See FIRA I² 68, p. 409; see also Cotton's (2007: 237–42) discussion of this text and of the Cicero passages.

¹⁷ Reynolds (1988: 31). This comment is made as part of an overview of the role of the city in antiquity; see also Millar (1993b) more specifically on the Greek city in the Roman period.

¹⁸ Originally published in Makarov (2005). See Kantor (2013b) for a more recent publication of the text and English translation, with further comments; the dating cited in the text is based upon the arguments put forward by Kantor.

¹⁹ Kantor (2013b: 83).

²⁰ On the monetary limit for cases they could hear in particular. This charter has inspired a wealth of bibliography, but see especially Cotton (2002a: 17) for discussion of its implications with regard to the Judaeon documents.

this, *duoviri* in many parts of the empire do seem to have had some judicial functions;²¹ furthermore, being able to choose one's own court appears to have been an established principle, suggesting a range of options were quite often available: Vespasian, for example, allowed teachers and doctors to sue for breaches of a certain edict in whatever court they so wished.²²

Literary sources also serve to flesh out the picture. Plutarch, writing around 100 CE, suggests that, in city life at least, local courts were an arena in which politicians could make their names.²³ Indeed, he sees them as a vital source of local independence that should be maintained:

ὥσπερ γὰρ οἱ χωρὶς ἰατροῦ μήτε δειπνεῖν μήτε λούεσθαι συνεθισθέντες οὐδ' ὅσον ἢ φύσις δίδωσι χρώνται τῷ ὑγιαίνειν, οὕτως οἱ παντὶ δόγματι καὶ συνεδρίῳ καὶ χάριτι καὶ διοικήσει προσάγοντες ἡγεμονικὴν κρίσιν ἀναγκάζουσιν ἑαυτῶν μᾶλλον ἢ βούλονται δεσπότης εἶναι τοὺς ἡγουμένους. αἰτία δὲ τούτου μάλιστα πλεονεξία καὶ φιλονεικία τῶν πρώτων· ἡ γὰρ ἐν οἷς βλάπτουσι τοὺς ἐλάττονας ἐκβιάζονται φεύγειν τὴν πόλιν ἢ περὶ ὧν διαφέρονται πρὸς ἀλλήλους οὐκ ἀξιοῦντες ἐν τοῖς πολίταις ἔχειν ἑλαττον ἐπάγονται τοὺς κρείττονας· ἐκ τούτου δὲ καὶ βουλὴ καὶ δῆμος καὶ δικαστήρια καὶ ἀρχὴ πᾶσα τὴν ἐξουσίαν ἀπόλλυσι.

For just as those who have become accustomed neither to dine nor to bathe except by the physician's orders do not even enjoy that degree of health which nature grants them, so those who invite the sovereign's decision on every decree, meeting of a council, granting of a privilege, or administrative measure, force their sovereign to be their master more than he desires. And the cause of this is chiefly the greed and contentiousness of the foremost citizens; for either, in cases in which they are injuring their inferiors, they force them into exile from the state, or, in matters concerning which they differ among themselves, since they are unwilling to occupy an inferior position among their fellow-citizens, they call in those who are mightier; and as a result council (*βουλὴ*), popular assembly (*δῆμος*), courts (*δικαστήρια*) and the entire local government lose their authority.²⁴

²¹ More commonly found in Western provinces: the Eastern provinces also had a range of officials. See Fuhrmann (2012: 58–61) for a description of some of their functions; also Arnold (1914: 250–3) for an old, but still relevant overview of the role of the *duoviri*.

²² FIRA I 73. See Humfress (2013b: 239–42) on *privilegium fori*.

²³ Plutarch, *Praec. Ger. Reipubl.* 805a.

²⁴ Plutarch, *Praec. Ger. Reipubl.* 814f–815a. Text and translation are from the Loeb edition, though I have translated *βουλὴ* as 'council' rather than 'senate'.

Plutarch, then, clearly discourages what we appear to see in the Babatha archive: constant recourse to higher authorities. Yet by this very act of discouragement, he also attests the existence of the courts and local government about whose authority he is worried. The centre of this authority is explicitly separate from the Roman, imperial government and Plutarch wants to make sure it is kept that way, and that the local community retains this vestige of its independence. Dio Chrysostom's comments, written in the second half of the first century CE, echo this viewpoint.²⁵

καταλείπεται δ', οἶμαι, τὸ ἑαυτῶν προεστάναι καὶ τὴν πόλιν διοικεῖν καὶ τὸ τιμῆσαι τινα καὶ κροταλίσαι μὴ τοῖς πολλοῖς ὁμοίως καὶ τὸ βουλευσασθαι καὶ τὸ δικάσαι καὶ τὸ τοῖς θεοῖς θῦσαι καὶ τὸ ἄγειν ἑορτήν· ἐν οἷς ἅπασιν ἔστι βελτίους τῶν ἄλλων φαίνεσθαι.

But there is left for you, I think, the privilege of assuming the leadership over yourselves, of administering your city, of honouring and supporting by your cheers a distinguished man unlike that of the majority, of deliberating in council (*βουλευσασθαι*), of sitting in judgment (*τὸ δικάσαι*), of offering sacrifice to the gods, and of holding high festival—in all these matters it is possible for you to show yourselves better than the rest of the world.²⁶

Despite the worry about a lack of power or authority, both authors attest to the possibility of giving judgment—even if the exact sphere in which this was possible is unclear from Dio's comments. Thus, local tribunals or courts in certain Greek cities were seen as a distinct source of pride, even if we are not entirely sure of the scope of their jurisdiction or the extent to which they were used. Indeed, this probably varied considerably from place to place and certainly the situation in free cities meant such courts received that recognition or legitimization from the imperial authorities that tribunals in others would not. It should also be noted that both authors also separate the institutions of the *βουλή* and the *δικαστήρια*: thus the presence of *βουλαί* in these cities or others would not necessarily equate to the existence of recognized, judicial fora as well. But it remains the case that that competency to decide cases and the presence of non-Roman legal fora are not only attested here, but are a source of pride.

²⁵ The exact date of this speech has been disputed; see Cohoon and Lamar Crosby (1979: 4) for comments on this.

²⁶ Dio Chrysostom, *Orationes* 31.162. Text and translation are from the Loeb edition.

When we come to search for possible locations of city tribunals in Roman Arabia, Petra and Bostra seem the most likely candidates. Both were *μητροπόλεις*,²⁷ and each appears to have had a *βουλή*. This is directly attested for Petra in P. Yadin 12 (discussed further below, p. 142); for Bostra, we have a good number of inscriptions that confirm there were councillors,²⁸ though unfortunately none provides evidence for any supposed judicial functions of these *βουλευταί*. Indeed, in most of these, the title *βουλευτής* or *βουλευτής Βοστρηνῶν*, is the only mention made—a good number of the inscriptions are epitaphs, so the office is listed as one of many held by the deceased.²⁹ We therefore have two cities which could potentially provide a focus for local forms of justice and which each definitely had their own *βουλή*, but we remain rather ill-informed about whether these councils really did have some sort of judicial competence, or whether—as in the Plutarch and Dio Chrysostom passages—this was an entirely separate field.

The archives also refer to other cities in the area to which we might look for some kind of local courts: Rabbath-Moab and Livias are both called *πόλεις*.³⁰ The two land registrations in the archives, P. Yadin 16 and P. Hever 62, appear to have been registered in the former city, but again we have no further information about any kind of court, tribunal, or council there. While Babatha summons Julia Crispina to Rabbath-Moab in P. Yadin 25, this simply indicates that it was on the governor's assizes' route. About Livias, we are similarly ill-informed with regard to its judicial institutions specifically. The legal status of city usually entailed some sort of autonomy in judicial matters,³¹ but the extent of this in these cases is unknown. Therefore,

²⁷ Petra had been a *μητρόπολις* since Trajan's reign, rather than Hadrian's, as often previously thought (see Bowersock (1991b: 18)). The important point here is that they were *πόλεις*; the *μητρο-* was purely honorific (see Cotton (1999: 83)).

²⁸ See IGLS 13. 1, 9009, 9374, 9422, and 9440 (all mention a *βουλευτής*); IGLS 13. 1, 9252, 9269, 9271, 9334, 9346, 9349, 9371, and 9430 (all refer to a *βουλευτής Βοστρηνῶν*); IGLS 13. 1, 9028 (refers to *βουλευτικός*). See MacAdam (1986: 212–17) for comments on the abbreviation BB and a list of inscriptions attesting to councillors of Bostra; MacAdam (1986: 218–22) for a further list of councillors of unidentified cities that are attested in village inscriptions; further tables of these inscriptions may be found in Sartre (1985: 84–7).

²⁹ See n. 28 for details of each of these inscriptions.

³⁰ Rabbath-Moab is mentioned in P. Yadin 16, l. 11 and P. Hever 62, l. 10; Livias in P. Hever 65, l. 4. Cf. Josephus, *Bellum Judaicum* 2.168, where Livias is described as a city in Peraea.

³¹ Cotton (2002a: 19).

despite the appearance of these other cities, we are left with the only attested local institution in the archives being the *βουλή* of Petra. What was the scope of its functions?

This *βουλή* appointed the guardians for Babatha's orphaned son, as recorded in P. Yadin 12. The Greek in this document contains an interesting peculiarity: it is said to be an extract *ἀπὸ ἄκτων βουλῆς* (l. 1/4–5), 'from the *acta* of the council'.³² This Greek rendering of the Latin *acta* would seem to indicate an institution that was fairly Romanized, which might be explained if the *βουλή* were a Roman creation after the annexation of the province, rather than a pre-existing administrative structure.³³ This in turn raises the issue of whether we should really see a Roman-created, or at least highly Romanized, body as a true example of a *local*, indigenous institution. A combination of the two might be more plausible.

Nevertheless, the exact competency of the *βουλή* is still somewhat unclear and, as has been suggested throughout, we cannot be at all certain whether it functioned as a court.³⁴ The literary sources, as we saw, suggest that courts were in fact separate institutions in Greek cities at least. From the available evidence, particularly that from Egypt in the later period, the *βουλή* does seem to have been more of an administrative body which sometimes dealt with issues of status in later antiquity but there is little to confirm or contradict the theory this was also happening earlier throughout the empire.³⁵ This does not, of course, rule out entirely the possibility either that it made

³² A similar phrase is found in a couple of epitaphs from Aphrodisias: in SEG 54. 1059 (the epitaph of Iulia (?) dated to the second century CE), further burials, removal of the body, and moving the sarcophagus are all forbidden *διὰ ἄκτου βου vacat <λ>ῆς* (l. 4) (see also SEG 54. 1056, l. 4). In these, the editor suggests the formula was influenced by the phraseology of testaments or foundation documents. My thanks go to Georgy Kantor for bringing these inscriptions to my attention.

³³ On the nature of the Petra *βουλή*, see Chiussi (2005: 108), who observes that it may have been either (a) a pre-existing municipal structure, unchanged by the Romans or (b) a structure invented by the Romans when they annexed the area; see also Oudshoorn (2007: 315, n. 51).

³⁴ The comments of Kantor (2013a: 158) on Roman Phrygia are rather pertinent for comparison here: 'Although our evidence for civic jurisdiction in this part of the province is very scarce and mostly inferential, it is natural to assume that city-dwellers could, as elsewhere in Roman Asia Minor, resolve minor private law disputes and pursue petty crime before civic authorities.' See Kantor (2013a: 158, n. 54) for further details on the evidence for this.

³⁵ See Bowman (1971), who assembles a wealth of evidence for the functions of town councils (*βουλαί*) in Roman Egypt.

judicial decisions or that there were other city tribunals that could: the state of our evidence on the subject simply does not allow us to advance to such a conclusion. Indeed, Babatha may just as well have decided to try to overrule the *βουλή* decision by invoking a higher power—the Romans. This would fit well with the idea that people may have appealed to a Roman court when they feared they would not get justice from a more local institution.³⁶ Babatha may have therefore thought that the city court would favour those whom the *βουλή* had appointed and so took her appeal (from her perspective) straight to the top.

Villages, the Law, and ‘Self-Help’

Yet even if we were successful in finding city courts or tribunals, there were remarkably few cities in Roman Arabia and neighbouring Judaea. These were, instead, areas dominated by villages. Furthermore, those described as cities in the Jewish sources may not actually have been a *πόλις* in the sense that either we or the Romans conceived it.³⁷ Josephus, for example, states that there were 204 cities in Galilee in his time; while it might have been the case that Galilee was rather urbanized, 204 *πόλεις* in the Roman sense of the term seems rather unlikely.³⁸ Instead, the village seems to have been the main social and communal centre in these areas,³⁹ and it is perhaps here that we should look for the localized centres of justice and law.

We know from the archives that the settlements in Roman Arabia seem to have had a hierarchical relationship to one another, with Maoza somehow subordinate to Zoara, which was in turn in the territory of the city of Petra.⁴⁰ These districts are only referred to in the Greek documents, which may mean they were a Roman

³⁶ For this idea, see Cotton (2002a: 18) and Reynolds (1988: 41).

³⁷ See comments by Cotton (2002a: 19–20).

³⁸ Josephus, *Vita* 235. See Root (2014: 151) on the urbanization of this area; even if it was fairly urbanized, this does not equate to the same thing as a full *πόλις* in the Roman legal sense.

³⁹ See Millar (1993a: 250): ‘As has been stressed many times, we can in fact assume, in general terms, that all the major cities which dominate any modern map of the Roman Near East were each individually no more than the focal point, and probably the largest single concentration of population, in an area filled with villages, which may often have been the main social units by which people identified themselves.’

⁴⁰ See Cotton (1999: 90–1) on these divisions.

innovation and thus might, perhaps, tell us little in our search for local courts or indigenous orderings based on pre-Roman power dynamics.⁴¹ Furthermore, we do not know precisely what this hierarchy entailed or the exact relationship between, for example, Petra and much smaller settlements within its territory.

Furthermore, villages, despite their small size, often behaved with a surprising level of independence more generally in the Near East.⁴² While it is unlikely that they had their own *βουλαί*,⁴³ studies on Syria suggest that villages did very often have their own officials and quite frequently undertook various building schemes.⁴⁴ Indeed, in a comprehensive review of the evidence for village life in southern Syria, MacAdam summarizes the situation as follows:

Villages formed their own assemblies, elected or appointed boards of magistrates, managed a common fund, negotiated with the Bedouin in their vicinity, petitioned the governor for redress of wrongdoing, sent ambassadors to Rome, regulated the use of common land, undertook joint endeavours with other communities, and subscribed public works projects of every conceivable type.⁴⁵

Villages in the region more broadly, then, could act as though they were independent units, often (though not always) with little attachment to

⁴¹ Indeed, the Nabataean and Jewish Aramaic documents written under Roman rule do not refer to administrative districts (where we have the location), even though they use Romanized dating formula (e.g. provincial era, consular year).

⁴² See Millar (1993a: 250–6) on villages and temples in Northern Syria and Cotton (1999: 82–91) (see also the brief comments in Cotton (2002a: 19–20)) on the *toparchies* and village structures found in the ‘Jewish region’. McLean Harper’s (1928: 145) evaluation that, ‘Each village seems to be a more or less independent unit, with comparatively little dependence upon a unit higher than itself, except of course the central administration of the Romans’, still holds true even if his contention that villages in Syria had their own *βουλαί* has been convincingly disputed: see Jones (1931b: 272–3) and MacAdam (1983: 108). This argument was based on a number of village inscriptions in which *βουλευτής* is attached to the name of certain men. There is, however, no reason to see this as anything other than an honorific title, designating those men who had served on a city council, and the word *βουλή* does not in fact appear in any village inscription: see MacAdam (1983: 108). For further information on villages in Palestine and Ituraea, see Jones (1931a) and (1931b); see MacAdam (1986: 147–222) and (1983: 107–8) on villages in Roman Arabia; Grainger (1995) on Roman Syria and Arabia, with references to further bibliography therein.

⁴³ See n. 42 for bibliography on this dispute.

⁴⁴ The New Testament also attests similar officials located in villages: see Cotton (1999: 88) for ‘self-rule’ in Jewish sources.

⁴⁵ MacAdam (1983: 107).

cities in the region.⁴⁶ Some even have the title of *μητροκωμία*, perhaps suggesting that they were a particularly large or dominant village in their area,⁴⁷ though this may simply have been an honorific title.⁴⁸ Additionally, the parties in the archives are almost always identified by their villages, suggesting that these were their core identity markers—in terms of legal documentation at the very least.⁴⁹ In short, then, the archives appear to fit well with our general picture of this region.

In light of this apparent independence, it seems perfectly logical to think that villages might also have had their own tribunals or at least some means of administering justice.⁵⁰ Nevertheless, the epigraphic evidence which provides us with our information about villages does not present us with a particularly detailed picture. Most inscriptions from Roman Arabia are either dedications or concern public works and building projects.⁵¹ Thus, while we possess the titles of many village officials, we know little about their duties beyond what we can try to infer from the titles themselves.⁵² For example, the designations *ἑκδικοί* or *σύνδικοί* initially appear promising in a search for people associated with local legal institutions. The *σύνδικοί* are well-attested in Arabia,⁵³ though again in almost all attestations of the office they are connected with building and construction work. Consequently, a

⁴⁶ In contrast to, for example, the situation outlined in the *lex Irnitana*, where the city courts had jurisdiction over the city's territory: see Cotton (2002a: 19) for comments.

⁴⁷ See Jones (1931b: 268) on the role of *μητροκωμιαί* in Ituraea; Sartre (1999) on Southern Syria; Grainger (1995: 180–2) on the import of the term in the Hawran.

⁴⁸ See Cotton (1999: 83–4; 87–9) on this subject in Syria and 'the Jewish region' respectively.

⁴⁹ See Millar (1993a: 250) on the village as the 'main social unit by which people identified themselves' in the Near East (see n. 39 above for a longer citation). Grainger (1995: 182) echoes Millar on the subject.

⁵⁰ Indeed, with regard to the 'Jewish region' of Palestine, Cotton (2002a: 20) has argued that 'It is either here in the capital villages or in the smaller villages—which enjoyed a large measure of independence—that one should try to locate judicial autonomy in so far as it was allowed by the Romans.'

⁵¹ See the comments by Grainger (1995: 192): 'None of these officials, apart from the early *στρατηγός*, can be shown to be actual administrators: the inscriptions record only their building activities.' The village officials and inscriptions pertaining to them for the northern sector of the province of Roman Arabia are comprehensively detailed in MacAdam (1986: 154–75); see also Sartre (1993: 120–31) on village institutions in Southern Syria, which includes information on 'magistrats villageois'.

⁵² Grainger (1995: 183–94) gives a good overview of the titles and tabulates all their occurrences.

⁵³ See MacAdam (1986: 171); see Grainger (1995: 186; 192) on *ἑκδικοί* and *σύνδικοί*.

promising title is accompanied by little evidence for the scope of the duties it involved.

Nevertheless, a village court or administrator would still seem the most convenient place to turn to in case of a dispute. Yet the nature of the evidence means such behaviour remains somewhat hypothetical. We might perhaps find a glimpse of some of the possible ways in which local-level justice functioned in Apuleius' *Metamorphoses*, a second-century novel and highly fictionalized account. Yet this fantastical narrative can still give us a small window into certain realities of daily life in a Roman province.⁵⁴ Within Apuleius' world, mob mentality occasionally dominates: a crowd decides that a suspected witch should be stoned;⁵⁵ on another occasion, after a woman is accused of killing her husband, the crowd react forcefully:

Saevire vulgus interdum et facti verisimilitudine ad criminis credulitatem impelli. Conclamant ignem, requirunt saxa, parvulos ad exitium mulieris hortantur.

The crowd began to grow enraged. The plausibility of the deed led them to believe the accusation. They began shouting for fire, searching for stones, urging youngsters to kill the woman.⁵⁶

The situation then further evolves, and a prophet is brought in to bring the deceased man's spirit back from the dead for questioning,⁵⁷ and his accusations against his wife then lead some members of the crowd to demand the woman be burned alive.⁵⁸ This is, of course, all fiction, but the social dynamics that are described might perhaps give us pause for thought, especially as the actions described are far from unique to Apuleius' narrative. This picture could indeed be compared with caution against that found in the New Testament, particularly

⁵⁴ Millar (1981) is the authoritative analysis of the 'solidly realistic background' (at 63) of this fantastical text.

⁵⁵ Apuleius, *Metamorphoses* 1. 10: 'As these acts kept occurring and many people suffered harm, public indignation grew strong and the townspeople decreed that she should be punished on the following day by the harshest means possible—stoning' (*quae cum subinde ac multi nocerentur, publicitus indignatio perccebruit statutumque ut in eam die altera severissime saxorum iaculationibus vindicaretur*). All text and translation of Apuleius is from the Loeb edition.

⁵⁶ Apuleius, *Metamorphoses* 2. 27.

⁵⁷ See Theodoret, *Historia Religiosa* 7. 2–3 for a similar example from late antiquity in which a holy man, Palladius, has a corpse testify as to who killed him, thus exonerating Palladius himself.

⁵⁸ Apuleius, *Metamorphoses* 2. 29.

some episodes occurring in Luke, *Acts*, where the crowd can also figure as a source of local 'justice': for example, Paul often encounters resistance from the crowd and is even beaten.⁵⁹ The New Testament evidence is obviously problematic as an historical source, though, as in the case of Apuleius, we might here detect something of the local dynamics in these passages. Whether we think of these instances as true 'justice' or mob rule is another matter altogether, but they do show localized ways of dealing with problems, disputes, and crimes, however distressing the methods may be.

In cities, towns, and villages, we should, therefore, perhaps allow for the possibility that forms of self-help and informal 'justice'—including what we might label vigilantism—were a key part of the legal landscape. The crowd, in the Apuleius example, are extremely keen to take matters into their own hands, performing their own investigation (calling in the prophet) and pronouncing their own judgment. Justice, at the local level, might rely on the social dynamics of the local area rather than official or even semi-official institutions.

If we return to the two archives for a moment, we can detect an element of this 'self-help' attitude (if in a much milder form) in Babatha's seizure of the date orchards whose crop is the subject of P. Yadin 21 and 22, and which Besas, one of the guardians involved in the dispute, accuses her of having seized and retained by force.⁶⁰ The recourse of the guardians afterwards is to more official institutions but Babatha's initial actions are separate from this. She acts based on the belief that she has a right to her dowry, but the point is that *she* acts.⁶¹ She may have expected the community to endorse her actions or just assumed that she had sufficient local authority to protect her against any repercussions.

With regard to the situation in smaller settlements in the Roman world, we may posit some kind of judicial institutions in villages by logical inference and probability, even if we can say regretfully little beyond this about the realities of how they may have functioned in this region. Additionally, however, we should also perhaps allow for more informal methods of dispute resolution in the smaller settlements

⁵⁹ For an example of resistance, see Luke, *Acts* 17:5; Paul is beaten at *Acts* 14:19. Seland (1995) considers at length 'Jewish vigilante reactions' in both Luke and Philo.

⁶⁰ He summons her to appear before the governor on this basis in P. Yadin 23.

⁶¹ Babatha claims a right to the date orchards 'in lieu of my dowry and debt' (ἀντὶ τῆς προ[ο]κός μου καὶ ὀφειλῆς) (P. Yadin 22, l. 10); cf. P. Yadin 21, ll. 11–12.

of the Roman Empire. Given enough clout, a prominent local man or group of people could probably pass judgment and enforce it fairly effectively based on local power structures and dynamics.⁶² This leads us neatly into the next possible givers of justice.

Jewish Tribunals and Justice

Whilst Jewish tribunals are never mentioned in the two archives, their existence in some form does not seem wholly out of the question. This need not have been a 'court' in a formal sense, or even a full tribunal, but instead was formed of some situation in which parties could have submitted to the decision of a figure based on his authority in the community.

In addressing the existence of local Jewish tribunals, it is worth briefly considering the status of Jews in the Roman Empire more generally. Jews, in broad terms, were allowed to use their own laws (*νόμοις . . . χρησθῆναι τοῖς ἰδίοις*).⁶³ Yet the exact meaning of this, especially with regard to the practicalities of legal life and administration, are less than straightforward.⁶⁴ The documents on Jewish privileges preserved in Josephus' *Antiquitates Judaicae* are key to this issue. Though their authenticity has been a matter of much dispute in the past,⁶⁵ the consensus is now that they are probably authentic, if highly selected and potentially copied from copies rather than originals. Josephus claims more for them than we may read—wishing to use the documents as evidence of the long-standing general privilege of

⁶² Indeed, this aligns with Grainger's (1995: 193) arguments about the functioning of villages in the Roman East: 'Villages were ruled by headmen, by informal gatherings of well-respected local men, and by the major landowners and their bailiffs.'

⁶³ The English phrasing is generally used to describe the situation of Jews in the Roman Empire in modern scholarship, though the wording is actually from a document of Antiochus III cited by Josephus (*Antiquitates Judaicae* 12.147–53). The Roman period documents do, however, use an extremely similar general formula: see Rajak (1984: 108).

⁶⁴ Discussion mostly concerns the wording of the decree issued by Caesar (Josephus, *Antiquitates Judaicae* 14.190–5) (part of which I cite). See Pucci Ben Zeev (1998: 409–38) on the implications of 'the right to follow Jewish customs and laws'; see also the comments by Hadas-Lebel (1987: 789) and Rajak (1985: 24), and especially Rajak (1984) more generally on the status of Jews within the Roman Empire.

⁶⁵ Scholarship has essentially come round in a circle since the early twentieth century on this matter, moving from regarding the documents as basically authentic, to possible forgeries, to authentic again: see Pucci Ben Zeev (1998: 6–11) for an overview of the scholarly trends.

all Jews in the empire—but we may still consider the implications of their contents without proceeding to his conclusion.

Three of these documents, cited below, are particularly relevant to the existence of Jewish tribunals in diaspora communities. The first is a letter written by Julius Caesar to the magistrates, council, and people of Sidon in 47 BCE, which contains a decree concerning Hyrcanus II. The part of the decree relevant to the current issue is as follows:

ἄν δὲ μεταξὺ γένηται τις ζήτησις περὶ τῆς Ἰουδαίων ἀγωγῆς, ἀρέσκει μοι κρίσιν γίνεσθαι παρ' αὐτοῖς.

And if, during this period, any question shall arise concerning the Jews' manner of life, it is my pleasure that they shall have the decision.⁶⁶

The precise meaning of this is not clear, but it has been taken to refer to a grant by Caesar to certain Jews to use their own laws in line with those accorded to other conquered peoples.⁶⁷ The next document is a letter from Lucius Antonius, dating to 49 BCE, to the magistrates, council, and people of Sardis. The relevant portion states:

Ἰουδαῖοι πολῖται ἡμέτεροι προσελθόντες μοι ἐπέδειξαν αὐτοὺς σύνοδον ἔχειν ἰδίαν κατὰ τοὺς πατρίους νόμους ἀπ' ἀρχῆς καὶ τόπον ἴδιον, ἐν ᾧ τὰ τε πράγματα καὶ τὰς πρὸς ἀλλήλους ἀντιλογίας κρίνουσι, τοῦτό τε αἰτησαμένοις ἵν' ἐξῇ ποιεῖν αὐτοῖς τηρῆσαι καὶ ἐπιτρέψαι ἔκρινα.

Jewish citizens of ours have come to me and pointed out that from the earliest times they have had an association of their own in accordance with their native laws and a place of their own, in which they decide their affairs and controversies with one another; and upon their request that it may be permitted them to do these things, I decided that they might be maintained, and permitted them so to do.⁶⁸

Finally, we have a decree passed by the council and people of Sardis, dated tentatively to 47 BCE:

ἐπεὶ οἱ κατοικοῦντες ἡμῶν ἐν τῇ πόλει Ἰουδαῖοι πολῖται πολλὰ καὶ μεγάλα φιλάνθρωπα ἐσχηκότες διὰ παντός παρὰ τοῦ δήμου, καὶ νῦν εἰσελθόντες ἐπὶ τὴν βουλὴν καὶ τὸν δῆμον παρεκάλεσαν, ἀποκαθισταμένων αὐτοῖς τῶν νόμων καὶ τῆς ἐλευθερίας ὑπὸ τῆς συγκλήτου

⁶⁶ Josephus, *Antiquitates Judaicae* 14.195. Texts and translations of all the documents preserved in Josephus are those found in Pucci Ben Zeev (1998), which are in turn taken from the Loeb.

⁶⁷ See Pucci Ben Zeev (1998: 413–15) for a discussion of the various parallels.

⁶⁸ Josephus, *Antiquitates Judaicae* 14.235.

καὶ τοῦ δήμου τοῦ Ῥωμαίων, ἵνα κατὰ τὰ νομιζόμενα ἔθνη συνάγωνται καὶ πολιτεύωνται καὶ διαδικάζωνται πρὸς αὐτούς, δοθῇ τε καὶ τόπος αὐτοῖς εἰς ὃν συλλεγόμενοι μετὰ γυναικῶν καὶ τέκνων ἐπιτελώσι τὰς πατρίους εὐχὰς καὶ θυσίας τῷ θεῷ· δεδόχθαι τῇ βουλῇ καὶ τῷ δήμῳ συγκεχωρήσθαι αὐτοῖς συνερχομένοις ἐν ταῖς προαποδεδειγμέναις ἡμέραις πράσσειν τὰ κατὰ τοὺς αὐτῶν νόμους, ἀφορισθῆναι δ' αὐτοῖς καὶ τόπον ὑπὸ τῶν στρατηγῶν εἰς οἰκοδομίαν καὶ οἴκησιν αὐτῶν.

Whereas the Jewish citizens living in our city have continually received many great privileges from the people and have now come before the council and the people and have pleaded that as their laws and freedom have been restored to them by the Roman senate and the people, they may, in accordance with their accepted customs, come together and have a communal life and adjudicate suits among themselves, and that a place be given them in which they may gather together with their wives and children and offer their ancestral prayers and sacrifices to God, it has therefore been decreed by the council and people that permission shall be given them to come together on stated days to do those things which are in accordance with their laws.⁶⁹

This latter decree is key: the Jews of Sardis ‘may adjudicate suits among themselves’ (διαδικάζονται πρὸς αὐτούς). While the first two are a little more ambiguous as to exactly what the ‘controversies’ (ἀντιλογίας) were and the scope of questions about their manner of life, this seems a fairly clear statement of internal Jewish dispute settlement among a Jewish group in Sardis. Thus, these particular Jews here were allowed to settle cases amongst themselves. Yet this may, of course, only have been in Sardis, or at least only have been in a few cities: at any rate, it certainly was not a general grant to all Jews of the empire. Jews in Egypt do seem to have had a degree of autonomy in Alexandria under Augustus: the ethnarch there ‘governs the people and adjudicates suits and supervises contracts and ordinances, just as if he were the head of a sovereign state’.⁷⁰ But the documents themselves, and even the Alexandrian situation, certainly do not represent a general grant to all Jews in the empire, but seem

⁶⁹ Josephus, *Antiquitates Judaicae* 14.259–61.

⁷⁰ Strabo *apud* Josephus (*Antiquitates Judaicae* 14.117): διοικεῖ τε τὸ ἔθνος καὶ δαιτῇ κρίσεις καὶ συμβολαίων ἐπιμελεῖται καὶ προσταγμάτων, ὡς ἂν πολιτείας ἄρχων αὐτοτελοῦς. (Loeb text and translation). See Gruen (2004: 71) on the implications of this passage, and indeed more generally on the Jews’ political situation in Alexandria (at 54–83). We know that Augustus appointed a *γερονσία* (see Philo, *In Flaccum* 74) though it is difficult to say whether this replaced or coexisted with the ethnarch.

to be more piecemeal dispensations to individual communities.⁷¹ Furthermore, these are—once again—evidence principally of *imperial awareness and recognition* of such community tribunals. They tell us nothing about what might have happened daily in villages or backwaters throughout the empire that had little direct supervision and would surely have needed some mechanisms among themselves in order to keep order.

Beyond Asia Minor and Egypt, there are further references to non-Roman tribunals in Judaea in particular. The Sanhedrin was the highest non-Roman body before 70 CE, but its exact nature, competency, and even its existence have been disputed for a great number of years.⁷² At a more local level, certain passages in the New Testament seem to indicate a Jewish criminal jurisdiction in Judaea at least,⁷³ and Josephus mentions local tribunals of seven magistrates.⁷⁴ Their exact competencies are unclear; yet in light of the evidence it seems highly probable that Jewish tribunals of various kinds operated across the Roman Empire and were used by Jews to a greater or lesser extent. These could have been completely unofficial in nature and, in Judaea, may have been more or less just local village tribunals, which happened to have been ‘Jewish’ by nature of the ethnicity of the population: what ‘law’ or custom they would have enforced, and how similar this would have been across the many communities in the broader area, is another matter altogether.

While we cannot take the later situation as representative of the earlier one, in this case this is worth briefly considering in order to demonstrate that Roman recognition and cognizance were not the be all and end all, and did not equate in absolute terms to existence or effectiveness. I am referring in particular to Origen’s comments on the authority of the patriarch, written in the mid-third century CE. Origen makes certain observations that are relevant to the issue of

⁷¹ The seminal article on this subject, dispelling the myth of a Roman ‘charter’ for Jews, is Rajak (1984).

⁷² This ranges from dispute about the very existence of the Sanhedrin, denied by Goodblatt (1994: 130), to the idea that there were multiple Sanhedrins: see, for example, Büchler (1902) and Mantel (1961: 54–101). See Grabbe (2008) for a recent survey of the evidence, with references to earlier scholarly debates on the subject.

⁷³ See Schürer (1973–87: III.1, 119–20) for a discussion of these, namely *Acts* 9:2; 22:19; 26:11; 18:12–16, and 2 *Corinthians* 11:23.

⁷⁴ Josephus, *Antiquitates Judaicae* 4.214; 287. The fact that these do not appear in the Pentateuch suggests that Josephus may here be reflecting practice in his own time: see Schürer (1973–87: II, 187) for comments on this.

Jewish autonomy while arguing for the historicity of the story of Susannah in the Book of Daniel. Susannah, the wife of Joakim, was threatened by two elders, who told her to choose between being sexually assaulted by them or being falsely accused of committing adultery with a young man. Susannah refused to give in, and so was tried, the men testified against her in court, and she was sentenced to death. The miscarriage of justice was resolved when a young Daniel stepped in and exposed the false testimony of the two men.

Africanus apparently objected to the historicity of this tale on various grounds, one of which was that it was unlikely that the newly exiled Jewish population in Babylon had the power of pronouncing capital punishment. Origen responds to this by claiming that, on the contrary, it is very common for kings to allow captured nations to use their own laws and courts. He continues:

Καὶ νῦν γοῦν Ῥωμαίων βασιλευόντων, καὶ Ἰουδαίων τὸ δίδραχμον αὐτοῖς τελοῦντων, ὅσα συγχωροῦντος Καίσαρος ὁ ἐθνάρχος παρ' αὐτοῖς δύναται, ὥς μηδὲν διαφέρειν βασιλεύοντος τοῦ ἔθνους, ἴσμεν οἱ πεπειραμένοι. Γίγεται δὲ καὶ κριτήρια λεληθότως κατὰ τὸν νόμον, καὶ καταδικάζονται τινες τὴν ἐπὶ τῷ θανάτῳ· οὔτε μετὰ τῆς πάντῃ εἰς τοῦτο παρ' ῥήσιας, οὔτε μετὰ τοῦ λανθάνειν τὸν βασιλεύοντα· καὶ τοῦτο ἐν τῇ χώρᾳ τοῦ ἔθνους πολὺν διατρίψαντες χρόνον μεμαθήκαμεν καὶ πεπληροφορήμεθα.

Now, for instance, that the Romans rule and the Jews pay the two drachmas to them, we, who have had experience of it, know how much power the ethnarch has among them with the acquiescence of the emperor and that he differs in little from a king of the nation. Secret trials are held according to the Law, and some are condemned to death. And though there is not express permission for this, still it is not done without the knowledge of the ruler, as we found out about this to our certainty when we spent much time in the country of that people.⁷⁵

The veracity and implications of Origen's statements about the ethnarch/patriarch (Origen uses the terms interchangeably)⁷⁶ have been much debated. But the fact this is an incidental remark,⁷⁷ which emphasizes the personal knowledge of those involved, might speak for the authenticity of the situation. Furthermore, if Origen were simply making this up, it would considerably weaken his overall

⁷⁵ Origen, *Epistola ad Africanum* 14. Text from Migne, PG 11, cols. 82–4. The translation is that in Appelbaum (2013: 112–13). For translation issues, see Jacobs (1995: 251) and Appelbaum (2013: 112, n. 159).

⁷⁶ See Levine (1996: 16).

⁷⁷ See the comments by Levine (1996: 30).

argument about the Susannah story,⁷⁸ on which he has already spilt much ink by this point in the letter.

If accurate, this passage provides us with valuable information about the patriarch in a period when the evidence that we have for the office is primarily rabbinic.⁷⁹ For the current purposes, even if Origen's statements do not reflect a precise reality, the way in which he describes the patriarch as bearing a king-like authority, to the extent of having the power to execute people, is extremely pertinent, as is the patriarch's position with regard to the Roman authorities.⁸⁰ This is left somewhat unclear. While the emperor was not unaware that capital punishment was being carried out,⁸¹ Origen is also explicit that 'there is not express permission for this'. The most probable explanation would be that the Romans allowed this state of affairs to go on without giving any official sanction for it; as de Lange puts it, they 'turned a blind eye'.⁸² But in some ways the issue of whether capital punishment specifically occurred is not the important point here: rather, we should note that Origen perceived and presented the patriarch as exercising considerable judicial authority. In this later period, then, we seem to have a Jewish patriarch exercising considerable informal jurisdiction over Jews in Palestine, who appear

⁷⁸ Goodman (1992: 128).

⁷⁹ Levine (1996: 1–4) offers a concise overview of the various types of evidence on the patriarchate that dominate in different periods, along with reactions to it; see also Levine (1979: 651–4). In addition to these two articles, for more general discussion of this passage and its implications (with further bibliography), see Oppenheimer (1998: 185), Jacobs (1995: 248–51), Goodman (1992), de Lange (1976: 33–4), and particularly Habas-Rubin (1991: I 64–71; II 265–73) (in Hebrew) and Appelbaum (2013: 112–16).

⁸⁰ It should be noted that this appears to be contradicted by Origen elsewhere (*Commentaria in Epistolam ad Romanos* 6.7): 'They [the Jews] may not punish a murderer or stone an adulteress' (*homicidam punire non potest, nec adulteram lapidare*). Text from PG 14, col. 1073; the translation is that of Levine (1979: 662, n. 75). See also Goodblatt (1994: 131, n. 2) on allowing for 'hyperbole' in this passage, as well as Jacobs (1995: 249–51) on whether the patriarch really did have the right of pronouncing capital punishment.

⁸¹ Jacobs (1995: 251) points out that Origen does not expressly state that it was the patriarch who presided over capital cases: 'Γίνεται δὲ καὶ κριτήρια (C) hat kein persönliches Subjekt. Ein inhaltlicher Rückbezug auf (B) [the latter part of the previous sentence] wird nicht eindeutig erkennbar.' Thus, on this reading, capital cases were heard among the Jews, but not necessarily by the patriarch. Appelbaum (2013: 113) disputes this interpretation.

⁸² De Lange (1976: 34); cf. Goodman (1992). For a contrasting view, see Goodblatt (1994: 131–75), who argues that the patriarchs derived their authority from Roman appointment.

to have submitted to his authority voluntarily.⁸³ If such a large role was accorded to Jewish judicial mechanisms after the *Constitutio Antoniniana* in 212 CE, when citizenship (and therefore at least theoretical access to Roman law) was granted to all the empire's inhabitants, this could have interesting implications for Roman policy in the earlier period, when such universal citizenship was not in place.

Yet, obviously, the situation cannot be transferred directly onto the earlier period.⁸⁴ The kind of centralized, Jewish authority that the patriarch (supposedly, at least) wielded over all diaspora communities is not in any way being suggested here.⁸⁵ What is relevant about Origen's comments, however, is the principle that the Romans may have allowed certain tribunals to function without officially endorsing them. We do not have to go so far as to posit powers of capital punishment in order to allow for the possibility of the existence of unsanctioned but tolerated Jewish tribunals in the earlier period. The point to note is that, even when Roman law supposedly became more universally accessible, there appears to have been considerable scope for people to seek justice in a Jewish framework.

If we are delving into later sources, it would be unjust not to mention the wealth of material on this subject that we find in the rabbinic literature.⁸⁶ The problems with using these texts as historical sources are manifold and will be dealt with in more detail in Chapter 6; yet the references to rabbis as judges in the literature are often noted and certainly merit discussion. In a study of the rabbis in their Roman context, Hayim Lapin has recently reanalysed the actual number of case narratives, which is surprisingly low: 'rabbinic traditions attributed to individuals or groups run to the many thousands

⁸³ Goodman (1992: 138).

⁸⁴ The patriarch's influence was certainly a much later phenomenon. While opinions vary on the rise in importance of the patriarchate, it is unlikely that the patriarchs had any real influence before the third century CE: see Schwartz (1999: 208). Furthermore, we have little information as to the level of patriarchal influence outside Palestine and, indeed, the office has traditionally been seen as a primarily Palestinian institution. See Schwartz (1999: 214–21) for the evidence on this, and an argument, against the prior consensus, that the patriarchs had more considerable influence in the Diaspora than in Palestine. See also Goodblatt (1994: 133–5) on the evidence that the patriarchs appointed judges and local leaders in the Diaspora, with references to previous scholarship.

⁸⁵ See n. 84 on the later influence of the patriarchs in the Diaspora.

⁸⁶ Note the early observations by Chajes (1899) that cases are typically taken to individual rabbis, not tribunals. On Jewish tribunals more generally, see Oppenheimer (1998); cf. Rabello (1996a) and (1996b).

in the tannaitic corpora and the Yerushalmi, yet there are only some 220 cases, spanning a putative period of more than three centuries'.⁸⁷ The tannaitic era encompasses the first two centuries CE—so the most relevant period for our purposes. Lapin further notes that most of these cases concern issues of ritual and purity, and those that do concern property and status are such that they mainly relate to very specific rabbinic interests.⁸⁸ Therefore, even if such tribunals were operating—or more likely, individual rabbis were acting as mediators or arbitrators of some sort—the available evidence seems to suggest that they would be consulted primarily on what we might classify as 'religious' matters. Consequently, even in the later period, when the rabbis had gained more power and influence, or within the groups in which they did have such influence in the tannaitic period, they may only have been consulted on certain specific matters. Even in these very specific circumstances, such figures may not have been thought to have sufficient or the correct kind of authority or knowledge to solve the kinds of disputes documented in Salome's and Babatha's paperwork.

At this point, it is worth pointing out once again that 'Jewish' law and justice in this period in no way equate to rabbinic law or justice. Babatha's *ketubbah* may suggest some kind of awareness of the same tradition that is reflected by the later rabbinic texts, based upon the inclusion of the mandatory *ketubbah* components that are listed in the Mishnah.⁸⁹ These, however, can just as easily demonstrate that rabbinic sages incorporated existing Near Eastern or Jewish custom into their own law, rather than that Babatha and Judah were living under some kind of early rabbinic influence (direct or indirect) at this time.

Yet we do not have to dismiss the possibility of Jewish fora for dispute resolution in the earlier period. What the evidence from both the earlier and later periods seems to show is that there were—at least in many Jewish authors' imaginations—mechanisms within Jewish groups for resolving such disputes between members of these communities. The authors—be they sages or Josephus—may certainly

⁸⁷ Lapin (2012: 104). See Tables 4.1 and 4.2 in the same author for further analysis of the cases (Lapin (2012: 100–1; 103)).

⁸⁸ Lapin (2012: 105–9). Ritual and purity issues constitute about two thirds of the cases; the remaining third refer to property and status.

⁸⁹ *m. Ketub.* 4:7–12.

have exaggerated the legitimacy or recognition such Jewish tribunals had in Roman eyes, or the power of certain factions for their own purposes. Nevertheless, this does not mean that we should altogether dismiss the possibility that some kind of indigenous ordering and certain institutions associated with it existed among Jewish communities in antiquity, in the same way it seems to have done in villages more generally.

Arbitration

We now come to the final category in our consideration of non-Roman options for litigants in Roman Arabia: arbitration. Here, we are interacting with what has been the predominant concern in previous scholarship—how Romans might have categorized or thought about indigenous orderings. But even within this, we might find layers of variations, and it is important to go beyond simply applying the label and consider the actual dynamics and processes that could be encompassed under this broad heading.

To start with arbitration in its more formal sense, this was constituted by an agreement between the disputants in a lawsuit to abide by a third party's decision.⁹⁰ The third party could be almost anyone—a Roman official, a centurion, a village elder, or a rabbi, for example.⁹¹ The key thing was that he would be nominated and the parties would agree to abide by his judgment. The procedure could be highly formalized: arbitration *ex compromisso*, for example, was documented in two formal agreements,⁹² and despite its nature as a form of agreement to which the parties voluntarily submitted, it did

⁹⁰ See Méléze-Modrezejewski (1952) on the formal process of private arbitration in Egypt, with plenty of examples that range from the Ptolemies to Byzantine times; see also Roebuck and de Loynes de Fumichon (2004), who collect the varied sources. On arbitration in late antiquity, see also Harries (1999: 175–84) and Gagos and van Minnen (1994).

⁹¹ Nevertheless, patterns in whom you would choose as arbiter were likely to emerge. For the Egyptian papyri, Méléze-Modrezejewski (1952: 249) makes the following observations: 'The sources indicate clearly that arbiters were chosen from among prominent and esteemed persons, trusted by the parties, well disposed towards them and versed in law.'

⁹² See, for example, the strict definition of both Méléze-Modrezejewski (1952: 240) and Harries (1999: 179): we would then expect to see two formal agreements, laid out in deeds, for an arbitration: (1) an agreement between the parties to choose and abide by the decision of an arbiter (*pactum compromissi*); (2) the arbiter's acceptance of his

allow the state a role in the process and its enforcement. But taken more broadly, arbitration could also be more informal and flexible in its form.⁹³ Indeed, this category, from the perspective of those in the Roman government, could encompass many of the others that have been considered in this chapter. This would allow for tribunals, or at least indigenous orderings of some kind, to exist and operate within the empire without the Roman government giving them any kind of formal recognition. The agreement to abide by the decision of a village tribunal could easily fall into this category, and the idea of rabbis as arbiters in antiquity has won some respected recognition in modern scholarship.⁹⁴ Such arbitration would rely on the agreement of the parties to abide by the decision of their nominated third party and, in all probability, localized power structures: the nominated party might have some authority in the community, whether religious, economic, political, or otherwise, and relied on that to guarantee compliance with his decision.⁹⁵ This would present us with a picture of justice administration that was extremely localized, based as it was on social power dynamics in the immediate area.

There is some scattered evidence for the practice of arbitration from across the empire,⁹⁶ and indeed it seems to have become more popular in later antiquity. Of particular note is the growing number of Greek *διαλύσεις* contracts from late antiquity, when arbitration seems to have grown much more popular in the Roman provinces. Or at

office (*receptum arbitri*). See also Roebuck and de Loynes de Fumichon (2004: 94–192) on *compromissum*. Harries' (2001: 76) comments should, however, be noted: 'In informal cases, where the agreement of the parties was deemed sufficient, it [i.e. the formal requirements] would have been dispensed with and the law rendered irrelevant'; see also Harries (2003: 65). We should, therefore, explicitly allow for a 'formal' and 'informal' process of arbitration.

⁹³ See n. 92 for Harries' (2001: 76) comments on this.

⁹⁴ See Cotton (2002a: 20): 'Whatever courts we hear about in the rabbinic sources, I suggest, may have been no more than forms of private arbitration, not backed up by the powers that be, i.e. the Roman authorities in the province.' Indeed, Lapin (2012: 98–124) devoted an entire chapter to the idea of rabbis as arbiters. Kelly (2011: 330) has also suggested, in relation to the petitions of Roman Egypt, that the legal apparatus provided by the state could 'underpin various "informal" methods of control'.

⁹⁵ For an examination of the way this kind of localized power, or 'local indigenous ordering', works with imperial institutions and practices, see Humfress (2013b).

⁹⁶ For example, in addition to the papyri cited in Méléze-Modrezejewski (1952), there is an early Chian decree, dating to the third century BCE, on arbitration of the dispute between Lamsakos and Parion: see Matthaïou (2013).

least we have more evidence for it from the later period; whether this represents a true increase in popularity is another matter.⁹⁷

In general, we can see fairly readily how such informal methods of dispute settlement might not leave much of a trace: parties could make an oral declaration that they would abide by a judgment and take it from there. Hannah Cotton has, however, suggested that three of the documents from the Judaean desert may have been the result of a settlement by arbitration, two of which are from these archives: P. Hever 63, P. Yadin 9, and P. Hever 13.⁹⁸ Since this pertains so greatly to the subject at hand, it is worth setting out in a little more detail.

P. Yadin 9 is extremely fragmentary and Cotton's conclusions about its nature rest on the use of the Nabataean Aramaic phrase in l. 6: 'nothing whatever . . . remains of mine with you' (ולא עדא \ ערא ל עמר מנדעם). Furthermore, the nature of this document as a 'waiver' of some sort has recently been disputed, and it may in fact be a sales contract.⁹⁹ P. Hever 13 was written in Jewish Aramaic in 134 or 135 CE under the Bar Kokhba regime. Cotton observes that it contains three variations on the above formula, therefore categorizing it as one of the settlement documents, but does not devote that much attention to it due to its dating.¹⁰⁰ While the date certainly means it provides us with little information about the operation of arbiters under the Romans, it is useful as a comparative example of how 'independent' Jewish communities might regulate their own affairs and thus merits a brief description at least.

P. Hever 13 has been categorized either as a divorce document written by the wife, or as a waiver of claims by a wife to her husband. The wife in question is called Shelamzion, daughter of Yehosef Qbšn (not to be confused with the daughter of Judah of the same name), the husband Eleazar, son of Ḥananiah. Whether this is a deed of divorce or a waiver—something that depends on the reading of ll. 6–7¹⁰¹—it

⁹⁷ See n. 92 for introductory bibliography on this, especially Harries (1999: 179–84) on *διαλύσεις*.

⁹⁸ Cotton (2002a).

⁹⁹ See Chapter 1, p. 30, n. 17.

¹⁰⁰ Cotton (2002a: 23).

¹⁰¹ Ll. 6–7: [ו]הא לך מנה גס שבקן ותרכ[ו], literally 'from whom you have/had a deed of abandoning and expulsion'. מנה is here translated as the third person but it is possible that it is an irregular spelling of מי, with a *he* instead of a *yod*, and thus is in the first person. This would transform the translation: 'you who has/had from me a deed of abandoning and expulsion'. This would mean that the wife (the 'me') had in fact divorced the husband. See Cotton and Yardeni (1997: 69) on this problem.

certainly represents a settlement between two parties of some sort, in which the wife repeatedly states that her husband no longer owes her anything. This means that, during Bar Kosiba's rule, there was some such mechanism for renouncing claims in the context of divorce settlements. Now, this renunciation may have simply been part of the divorce deed itself rather than a separate agreement, but this still seems to have been a process agreed upon between the two parties, without evidence of an outside third party in this deed. Essentially, when there was an independent Jewish kingdom, settlement mechanisms do seem to have had a role in divorces at least.

Coming back to the Roman era, the key document among the archives is P. Hever 63. This was labelled in its publication as a 'Waiver of Claims'. It dates to 127 CE and is written in Greek. In this waiver, Salome Komaise acknowledges that she has no claims against her mother, Salome Grapte, regarding the estate of her father and that of her brother. There is a possible reference to a now resolved controversy but the text is uncertain at this point. Cotton, to my mind convincingly, argues that this represents a settlement of the apparent controversy—one particularly convincing feature is the repetition two to three times of the Greek equivalent to the above Aramaic formula: '[she] has no claim against her' (μηδένα λόγον ἔχειν πρὸς αὐτήν).¹⁰²

Whilst I certainly agree that this is a settlement document, the notion that it is a result of arbitration—if we define this in its strict formal sense, with all the necessary documentation this entailed—needs further examination.¹⁰³ More specifically, we need to consider the exact role of the arbiter in the process. The document itself is of little help for his role in this particular case but the question is still a relevant one with regard to a more general framework of the legal dynamics that operated in this area. Jill Harries has already set out something like this for arbitration cases in late antiquity.¹⁰⁴ Harries drew on Philip Gulliver's model of dispute settlement, which divides into two main branches: adjudication and mediation/negotiation.¹⁰⁵

¹⁰² P. Hever 63, l. 4, 8 and possibly 11, of which only the end survives (ε πρὸς αὐτήν).

¹⁰³ On 'formal' and 'informal' arbitration, see n. 92. Since in the Salome Komaise archive we do not have the luxury of a confirmed, unified find-spot for the archive, the fact we do not have the formal documents is not necessarily conclusive—they may very well have been lost. Equally, practice may have varied from place to place with regard to the precise documents required.

¹⁰⁴ Harries (2001).

¹⁰⁵ Gulliver (1979). See also the summary of his model by Harries (2001: 73–4).

An arbiter who was an adjudicator would apply ‘the rules’ more strictly, while the negotiator or mediator would be more flexible and take context into greater account.¹⁰⁶ Gulliver himself concedes that the boundaries between the two could break down,¹⁰⁷ and Harries is careful to point out the problems involved with such a model,¹⁰⁸ but the distinction between adjudication and mediation may be a useful one for analysing the situation in these archives. When we discuss arbitration, we need to consider the exact sense in which the word is being used and the kind of process we imagine that we are describing, because we are essentially here taking the Roman perspective of how these rulers would have categorized what was probably a wide range of localized resolution activities. The broad general categorization in and of itself does not fully reveal the dynamics that lie within it in each individual community.

So, when Salome Komaise and her mother were in dispute, a dispute which we have suggested was settled by some sort of ‘arbitration’, the exact nature of the process to which we are referring could vary. A third person may have been approached to pass judgment or to act as ‘facilitator’.¹⁰⁹ Alternatively, perhaps we could add a third option to the mix: that of negotiation without a third party’s involvement, based on a series of interactions or disputes between the parties themselves. While this may not have occurred in this case—the presence of a settlement document as a result of the process might suggest a third party helped reach the terms laid out—it is a possible course of action that we should consider when examining the rest of the archives. Indeed, this will be discussed at greater length in Chapter 6 with regard to the documents attesting litigation before the Roman governor. For the moment, however, the point to note is that ‘arbitration’ is a concept that encompasses a wide field of dynamics and may even include even less formal negotiations between litigants.¹¹⁰

To return briefly to the specifics of P. Hever 63, Cotton adds a further observation:

The fact that the deed was written down in Greek and the use of the *stipulatio* imply to my mind that the parties left themselves the option

¹⁰⁶ Harries (2001: 74). ¹⁰⁷ Gulliver (1979: 209–10).

¹⁰⁸ Harries (2001: 74–5).

¹⁰⁹ Gulliver’s (1979: 209) vocabulary; see Gulliver (1979: 219–28) more generally on the role of the mediator.

¹¹⁰ In this, I echo comments by Harries (2003: 66).

of going to court—to a Roman court—in case one of them did not stand by the terms of the arbitration.¹¹¹

This introduces a further question of power dynamics and authority in the community and allows us to make a couple of observations about the arbiters and local enforcers who operated in this area. If we accept that P. Hever 63 is the result of some kind of arbitration, then some of the arbiters and parties involved in the disputes must have been willing for the resulting documentation to be written in Greek, whether or not they themselves operated in the language.¹¹² As Cotton points out, this was probably to allow for easy recourse to the Roman system should something go wrong in the settlement.¹¹³ This, however, leads us to conclude that provincials somehow relied on the authority, power, or threatened power of the Roman imperial government as the ultimate ‘backup’ in their transactions, even those conducted separately from it. They relied on the fact that, if something went wrong in this localized transaction, they could take a new case upstairs. We might then conclude that this would reduce the authority of local tribunals or arbiters, since even those who may have used them still in some ways relied on an external authority, or the threat of recourse to the external authority, to help make any resulting decision effective.

There is a further corollary to this ‘keeping their options open’ theory. If this is correct, then any documentation that was the result of arbitration might have looked extremely similar to that which was intended for a Roman court. In both cases, people would keep in mind Roman preferences when drawing up their documents, even if they had reached a settlement through entirely localized mechanisms, just in case they ever had to go to the Romans about the same matter. Documents originally drawn up with the imperial overlords in mind

¹¹¹ Cotton (2002a: 23).

¹¹² Local arbiters may have operated in Greek, but if the documentation was written by a scribe, as was normal practice, there is no necessity to assume this.

¹¹³ If this is accepted, the issue could also be turned on its head: does the presence of non-Greek documents suggest the existence of non-Roman courts? Cotton (2002a: 19) seems to argue for this hypothesis: ‘Although, as pointed out before, no courts are ever mentioned in the Aramaic documents from the Judaean Desert, the existence of legal contracts anticipates the possibility of legal proceedings.’ While this is true, I am not sure that the existence of legal contracts in a particular language anticipates the possibility of legal proceedings in a particular court, as seems to be implied in Cotton’s statement. The language issue is a little more complex, as is discussed at length in Chapters 2 and 4.

would—it was hoped—make that later process easier than any written, for example, in a native Aramaic dialect. Thus, the Roman annexation probably did have very real effects on any local orderings or institutions connected with justice administration. But these effects should not be assumed to equate to total annihilation.

LOCAL TRIBUNALS AND ROMAN IMPERIAL POWER: EFFECTS AND INTERACTION

The principal concern in many discussions of localized tribunals—Jewish, village, or otherwise—has not necessarily been their existence but the extent to which they were valid from a Roman perspective. Questions on these matters are thus often phrased in a way that asks how much autonomy Romans granted peregrine communities—when we ask, for example, ‘Did the Roman allow Jews to live according to their own laws?’—but this is only half the picture, the Roman half to be exact. It disregards the fact that the Romans may not have known or cared about what happened on a day-to-day basis much lower down the ladder. Indeed, when we fail to separate these two issues—existence and Roman recognition—the two risk becoming completely intertwined, so that whether local tribunals existed becomes contingent on whether the Roman imperial government granted subject communities the right to live by their own laws or settle their own disputes. Such an equation ignores what has become increasingly evident from recent sociolegal and anthropological studies on this matter, which make it abundantly clear that in most time periods and societies, local indigenous orderings and localized legal fora can and do continue to exist without any sort of state recognition or oversight.

To come back to the situation in Roman Arabia specifically: this was a former client kingdom, fairly recently annexed. The kingdom certainly had its own community groups and structures, as any area does. These could have lain in village settlements, towns, and its few cities. These would have had their own legal fora and mechanisms, which may have been more or less effective, fair, and widespread. They may even have been connected with the monarchical government to a greater or lesser extent in each case. But the Roman

imperial overlords were unlikely to have been involved in client kingdoms' judicial affairs, except perhaps in exceptional circumstances at the highest level. When Judaea was a client kingdom under Herod the Great, he appears to have had full competence to dispense justice as he pleased, choosing to involve the Romans only when he thought it politically expedient to do so: for example in the trials of his sons, Alexander, Aristobulus, and Antipater.¹¹⁴ There do not, therefore, seem to have been any restrictions on kings dispensing justice to their own people—obviously, taking action against Roman citizens would be another matter altogether. Now, when a rather minimalist judicial 'system' such as that provided by Rome to its provinces was introduced, is it really logical that long-standing indigenous orderings would simply disappear overnight? That village hierarchies would vanish, that elders would lose all their authority in resolving disputes, that communities would essentially turn aside altogether from the existing structures they had in place? Changes were certainly likely, but it takes time for the full weight of these changes to be felt. As the increased Roman presence had its effect and the locals' awareness of their Roman options increased, a gradual transformation would have occurred in how such localized legal fora were used and in their status within their own communities. But this does not equate to their disappearance, at least not at once. Rather, it means we should be careful to further consider if and how the imposition of direct Roman rule would have affected them.

Indeed, it seems most likely that local indigenous orderings could work alongside the court of the Roman governor and the two could even be used in tandem.¹¹⁵ It is also plausible that people might have gone to a local arbiter or judge of some sort during the potentially interminable wait between sessions in the hope of reaching a settlement ahead of the next hearing before the governor. Or indeed that an individual would go to the local arbiter/judge first and then appeal to the Roman authorities for help imposing his judgment or in the hope of getting a different decision if the case had not gone his way. The example at *y. Meg.* 3:2 might be relevant, despite the much later

¹¹⁴ There is a wealth of bibliography on these trials, which often come into the numerous biographies of Herod, but see especially Volkmann (1969: 153–61), Bammel (1986), Rabello (1992), and most recently Schuol (2007: 145–57).

¹¹⁵ See Kelly (2011: 329–30) on the interaction between 'informal' and 'formal' methods of control. Indeed, it will be suggested in Chapter 6 that people negotiated constantly whilst also pursuing their cases with the Roman governor.

date of the text: the Jerusalem Talmud's final redaction probably occurred in the late fourth century CE, although the head of the Caesarea rabbinic academy, Rabbi Abbahu, who is mentioned in this example, was active in the third century. In this case, a woman called Tamar complained to the governor of Caesarea about a decision made by rabbinic sages, which implies just the kind of manipulation of one's legal options suggested above. While this is the only example of such an appeal to the Roman authorities consequent to rabbinic arbitration, we should not use the absence of other examples to assume that this was only a very rare occurrence. The rabbis may very well not have wished to give ideas to their audience, or allow for any kind of undermining of their authority.

The overall picture painted here would seem to suggest that even when local judges/arbiters existed, people still relied on the Roman authorities, implicitly or explicitly, as the ultimate authority and power in legal matters, believing that these outsiders were somehow more threatening than local institutions. They might also have used the Roman authorities to overturn localized decisions, opening a new case in the Roman court after local arbiters or judges had decided against them. We can imagine that this could have led to an erosion in use of these local authorities, since they might not have seemed as powerful and effective as they had been previously.

But this is just one possible picture, based on two families' practices in this community. Even if there was a new, powerful imperial overlord on the block, this does not necessarily mean that older, localized institutions died out. It has been suggested throughout that local power structures and legal mechanisms in all probability came to be employed alongside those of the Roman authorities. As such, rather than positing an inevitable decline into non-existence with the advent of the Romans, we should instead consider the ways in which local legal fora and their use may have been affected by the new Roman presence and may have interacted with it. Local and imperial structures seem to have worked, and have been made to work, by provincials in conjunction with each other.

We should sound a further note of caution here. Just because Babatha frequently turned to the Roman assizes does not mean that all did. While the archives do offer us a fantastic insight into the legal strategies adopted by her, Salome Komaïse, and their families, they should not be assumed to be universally representative of all members of that community or of all similar communities in the region. Others

in the province may have been perfectly happy to participate only in localized legal orderings, without recourse to their Roman overlords. While the remoteness of the governor might increase his perceived majesty, it did also make it more inconvenient and certainly more expensive to go to him all the time. In light of this, a local enforcer would seem more effective, as well as more convenient to many on the ground.

The Roman Officials

The Roman governor and his court have loomed large over most of this study; a sometimes distant yet ever present concern, whose existence had wide-reaching effects on the behaviour and strategies chosen by litigants in their dealings. But if his presence has indeed lurked here as it did in antiquity, this is not to say that the process of using the governor's court was straightforward or identical for every litigant. Certainly, there were formal rules of procedure, but cases could progress differently depending on the litigants involved and how they chose to pursue their goals. If we recall once again the idea of a court as a centrifugal institution with wider effects than just what happened within it, we can begin to see that the presence of the assizes had very wide ramifications and effects on the way that cases were conducted even before they reached the governor's (or his staff's) eyes and ears.

Furthermore, the way cases proceeded and were decided was not only dependent on the individual litigants involved, and the advisors, scribes, or other helpers they chose to employ. It could also vary greatly depending on the personal capabilities of the governor himself and his staff—the outcomes especially. It is tempting to see in the Roman imperial administration a uniform body of expertise and regulations—a source of stability, if you will—that litigants would be confronted with when they eventually reached it. This was the point of consistently applied rules. But the various kinds of expertise of the governor himself and of his staff are no less vital to consider than those of the litigants and their personnel, and indeed were probably also somewhat variable. If we recognize the lack of knowledge, or varying degrees of knowledge, of the litigants involved and the effects that had on their transactions, we must do the same when we consider how the Roman court might have judged these cases. In

this period at least, there was not a uniform, regimented schooling to train governors for the specific part of the world they were to be sent off to govern. Furthermore, some were more experienced at their job—even if they learned it elsewhere—; some less so. Essentially, the Roman administration itself was not immune from the variability and individual agency that I have suggested must be considered with regard to the provincials.

And so, we come at last to these Roman officials who now step forth from the shadows and into the limelight. What kind of situation were these litigants getting themselves into when (and, indeed, if—though we shall come back to that) they reached the court, with paperwork and advisor in tow? How would a Roman judge decide a case? This last question is fundamental. What were the principles on which Roman judges made their decisions, from where or from whom did they get their information, and just how good was that information in the first place? And how much would litigants and their advisors/scribes have known about this process, or how would it have looked to them and been factored into the way in which they chose to conduct their cases?

THE ROMAN GOVERNOR IN THE PROVINCES

A Brief Overview

The administration of justice was one of the prime duties of a governor.¹ To this end, he would tour the designated assize-centre cities of the province and, when he or his delegated official was in the area, provincials could seize the opportunity to have their cases heard by him.² The Roman judge would then decide how to proceed or judge the case there and then.

¹ See Bérénger (2014) on the duties of governors, though she considers only those of senatorial rank: she deals with the administration of justice in Chapter 4 (at 171–235).

² In Asia Minor at least, the governor seems to have been able to choose which areas he would visit personally and to which he would send his legates instead: see Kantor (2008: 195). Whether the situation was identical in imperial provinces is a matter of debate: see Weaver (2002) on differences in practice across the three categories of provincial governors.

While this process may appear fairly simple, problems could easily arise, not least due to the practicalities of conducting one's case in a court which did not stay in a single location. Furthermore:

The organization of the assizes . . . did not necessarily provide for a fixed order of cases even though petitions had been delivered beforehand; there was no assurance either that all litigants who gathered at an assize would gain a hearing; above all there was no formal machinery or procedure for the presentation of petitions (*libelli*) to the proconsul.³

Litigants would consequently have to travel to the court and then wait around until their cases were heard, with no guarantee that they actually would be. The costs could presumably spiral: aside from travelling expenses, the parties would be staying in rented lodgings if they did not happen to own property or live in the assize centre.⁴ This is without factoring in the costs of bribing officials to try to get one's case bumped up the theoretical list, or indeed the governor himself: Pliny records the case of Marius Priscus, proconsul, who was accused by the people of Africa of taking bribes to condemn and even put to death innocent people.⁵ Litigants would also have to reward, if not pay, their advocate.⁶ If the process at first seemed straightforward, it soon begins to look complicated, troublesome, and expensive for the parties involved. Ari Bryen has recently summed up the process in Egypt rather succinctly: 'To an individual petitioner, trying to force officials to do things must have felt like pushing a large rock uphill, with the coordinate threat that the rock might at any moment roll backward and squish him.'⁷

³ Burton (1975: 101).

⁴ Parties might have had to or might have chosen to travel to an assize centre in a different area from that in which they lived: see Kantor (2013a: 148–9) on litigants travelling to assize centres in Roman Phrygia.

⁵ Pliny, *Epistulae* 2.11.

⁶ The rules regarding payment of advocates were subject to some change throughout the early empire. In Rome, under the *Lex Cincia* of 204 BCE, advocates were supposed to be unpaid in the Republican period. Augustus re-enacted this law (see Dio Cassius, *Historia Romana* 54.18.2), which Crook (1967: 90) sees as evidence that 'the rule was constantly being infringed and as constantly reiterated'. Under Claudius, a maximum fee of ten thousand sesterces was allowed (see Tacitus, *Annales* 11.7). Tacitus (*Annales* 13.5) states that Nero abolished fees once again, though Suetonius (*Nero* 17) reports him as allowing 'a fixed and reasonable fee' (*certam iustamque mercedem*) (text and translation from the Loeb edition). See Crook (1967: 90–1) for further comments on this issue.

⁷ Bryen (2013: 127).

All this gave litigants even more incentive to maximize their chances of winning or do their very best to avoid the court altogether—otherwise, they could incur considerable expenditure for an unfavourable outcome. In trying to avoid the court, they might engage in the kind of out-of-court negotiations that I suggest are possible to trace in the Babatha archive. The trouble and expense could also be used as a weapon against opponents in such bargaining: if it is assumed that the other party would also prefer to avoid all the waiting around, threatening to make them do so by pursuing matters through the Roman system might help force a settlement, even one in your favour. The fact that it would inconvenience you too is part of a calculated bluff that is hoped to benefit your case. This is a staring contest in which you desperately hope that your opponent will blink first.

Nevertheless, starting the Roman court process meant that litigants also had to allow for the very real possibility that they might end up there if negotiations failed. It was therefore natural for the parties to try to find out about and conform to the preferences of Roman officials, as has been suggested they often did.⁸ Information about the criteria under which they made their decisions was particularly valuable, as it enabled parties, or more probably the advisors consulted by them, to make a prediction about whether a case was likely to be decided in their favour. The parties could then decide (a) whether it was worth the expense of proceeding in a particular legal forum and (b) if they did proceed, how best to frame their complaint.

This leads us to the question of how Roman officials made their decisions. Did they attempt to follow a particular ‘body of law’, Roman or local, for example? Was there any consistent ‘policy’ in decision-making, or were they influenced by any particular factors? In short, how consistent were Roman governors with regard to the criteria they used to judge cases and so how able were litigants or their advisors to predict the likely outcome of a particular dispute?⁹

⁸ See also Meyer (2007) on ‘Romanization’ in Roman Arabia and Judaea; Meyer looks specifically at the Babatha and Salome Komaise archives and delineates elements she argues were determined by the Roman presence.

⁹ More generally on the ‘schizophrenia’ with which law functioned in the classical period, simultaneously ‘working at once to universalize norms but also along multiple axes to fragment the empire’, see Ando (2011: 22–7; citation from 23).

Roman Legal Decisions

The Law of the Province and Provincial Edicts

In theory at least, the governor decided cases in line with the principles laid out in the *lex provinciae* and his own edict upon entering the province. From the late Republican era, a *lex provinciae* was drawn up by a board of ten senators when the province was created. This law would, therefore, be 'similar to, but not exactly the same as the law he [the new governor] might have come across in Rome'.¹⁰ A *lex provinciae* was not, however, a necessary condition for the creation of the province: while Sicily had the *lex Rupilia* and Pontus et Bithynia a *lex Pompeia*, Egypt does not seem to have had a provincial law and Germany also appears to have been incorporated into the empire without one.¹¹ Consequently, there may or may not have been one for Roman Arabia and so the governor did not necessarily have this to guide him. Additionally, the *leges provinciae* typically dealt more with determining the kinds of cases the governor could or would hear;¹² when faced with a case which cited or was framed in competing laws or traditions, it would not necessarily have given him stringent guidelines for proceeding.¹³

Aside from the *leges provinciae*, we also have provincial edicts.¹⁴ These were issued when a governor took up his post and laid out the bases upon which he would hear cases during his governorship. In many cases, this edict probably stayed the same from one man to the next, but each new governor was free to make the changes he wanted to.¹⁵ He could also add clarifications to this throughout his time in office, producing *edicta* on a wide variety of subjects as they came to

¹⁰ Richardson (1976: 34).

¹¹ On Egypt, see Bryn (2012: 790) and Méléze-Modrzejewski (1970); on Germany, Lintott (1981: 60). For further examples of provinces for which we have no evidence of a *lex provinciae*, see Lintott (1981: 59–60).

¹² See Richardson (1994: 583): the *lex* 'determined the extent of the governor's powers, including his jurisdiction'.

¹³ Laws of individual towns were sometimes specific as to the applicable law: see, for example, the *lex Irmitana* (the text may be found in González and Crawford (1986)).

¹⁴ This was similar to the praetorian edict, whose form became fixed under Hadrian. See Turpin (1999: 514–22) on the edict; also Katzoff (1980: 825–33) for a brief summary of the issues and bibliography on this subject, with particular reference to Egypt.

¹⁵ Richardson (1976: 34). Urch (1929: 94) comments that this was usually 'drawn from the *lex provinciae*, the edicts of former governors, and, in points of civil law, the edicts of the urban praetors', though also included 'original provisions'.

his attention.¹⁶ The freedom that a governor had in drawing up his edict means there may have been little uniformity from province to province or, theoretically at least, from governor to governor. Thus, while Cicero had once allowed his subjects to use their own laws and judges in Cilicia,¹⁷ future governors of the same province would not be bound to do the same.

If a *lex provinciae* existed, governors would have to rule in accordance with it but ultimately it seems that they could decide their own terms upon entering their province. Once they had set these out, they were theoretically bound to abide by them. In fact this was probably more than theoretical, as provincials would often seek out the edicts of current and previous governors in attempts to give weight to their arguments, trying to bind governors to their own rulings and those of their predecessors.¹⁸ Provincials at least believed governors were bound by their edicts as well as, indeed, their prior decisions.

Roman Legal Literature

In terms of Roman legal literature, we have some evidence of apparently rather specific guidelines on how cases should be decided:

De quibus causis scriptis legibus non utimur, id custodiri oportet, quod moribus et consuetudine inductum est: et si qua in re hoc deficeret, tunc quod proximum et consequens ei est: si nec id quidem appareat, tunc ius, quo urbs Roma utitur, servari oportet.

In those cases where we have no written laws, we should hold to what has been established by custom and use. And if this is deficient in some way, then we should hold to what is nearest and follows from it. If even this is not evident, then the law which is used in the city of Rome should be applied.¹⁹

¹⁶ For a collection of edicts from Egypt, which give a good impression of the range of subjects, see Katzoff (1980: 809–19). Katzoff (1980: 821) observes that, while they vary enormously, most ‘lay down general rules relating to matters of religion... fiscal administration... general administration... measures to check governmental abuse... criminal law... and private law and procedure’.

¹⁷ Cicero, *Ad Atticum* 6.2.4: see Chapter 5, p. 137, n. 15, for the quotation.

¹⁸ See Bryen (2012: *passim*, but especially 776) for an extended consideration of this idea, by which provincials attempted to manipulate their governors by controlling texts and, through them, legal rules.

¹⁹ D.1.3.32.pr (Julian, *Digest*, Book 84. Translation is my own, adapted from Watson’s in Mommsen, Krueger, and Watson (1998)). See also the key passage D.1.3.33 (Ulpian, *1 de off. procons.*): ‘It is usual for long-established custom to be

The passage is from Salvius Julianus, a second century jurist. Here, we seem to have a set of guidelines for ambiguous cases: where there is no statute covering the case, *mores* and *consuetudo*, i.e. that presented as tradition, custom, or law (whichever terminology we wish to use),²⁰ should be obeyed; if this was no help, then judges should reason from *mores* and *consuetudo*; if still at a loss, then, as a last resort, they were to use the law of Rome. On the surface this seems extremely useful for our enquiries: one Roman jurist at least, during our period, had thought about the problem of ambiguous or unclear cases and attempted to come up with guidelines for how judges would deal with them.

Now, however, comes the ‘but’. This passage goes on to give a more thoroughgoing definition of ‘custom’, one which is very frequently cited as a prime example of a *post-classical* definition.²¹ This is the problem: this useful passage has frequently been classified as subject to heavy post-classical interpolation, mainly due to the fact that ‘it seems to understand custom as *ius non scriptum*, custom as existing *pro lege* etc.’.²² It is, however, usually the latter part of the passage that is thought to be an interpolation, while the prologue (cited above) has generally been left untouched.²³ Moreover, the extract has recently been relocated in its original second-century context: Caroline Humfress re-examines the passage at length, going on to argue that ‘Julian’s discussion of custom probably originally responded to a technical and

observed as law in those matters which have not come down in writing’ (*diuturna consuetudo pro iure et lege in his quae non ex scripto descendunt observari solet*). On the same subject, see, for example, D.1.3.39 (Celsus, *Digest*, Book 23) (regarding the problems on reasoning from custom). On taking ‘custom’ into account in specific cases, see D.22.1.1.*pr* (Papinian, *Questions*, Book 2) (on assessing interest in a bona fide action) and D.25.4.1.15 (Ulpian, *Edict*, Book 24) (on cases where a woman claims pregnancy after the husband has died). For an excellent recent discussion of the role of custom in Roman law, see Humfress (2011).

²⁰ The emphasis here is on *presented*—what provincials claimed was long-standing tradition, law, or custom may not have been quite as established as they suggested. For the idea of ‘custom’ as a more fluid construct, see Humfress (forthcoming: 10–11) and (2011: 42–3).

²¹ See Kaser (1939: 54, n. 3) for a summary of the arguments for the text being interpolated.

²² Humfress (2011: 26).

²³ Steinwenter (1930) suggested that the first sentence might have been a gloss, but was primarily concerned with categorizing everything beyond this as interpolated. Solazzi (1929) argued that, unlike in this passage, custom could not override statute, even if the latter had fallen into disuse; Schiller (1938: 282) agreed.

precise legal problem that arose under the early empire'.²⁴ She emphasizes that all the prologue part of the text states is that, in the specific situation where there is no statute, custom and practice should be taken into account. This passage, therefore, becomes 'a dynamic, problem solving text—oriented ultimately towards resolving specific difficulties from city-state to empire'.²⁵

We may perhaps, then, cautiously take this text as a way in which certain governors may have decided cases in which there was no written law to enforce. In such circumstances, they would attempt to abide by established indigenous customs or reason out from these wherever possible. This need not, however, have been universal. One text in the *Digest*, even if it is authentically from our period, does not mean that this was standard practice for all governors across the empire. To quote José Luis Alonso briefly:

From our perspective, Julian's text is a milestone in the history of customary law. It was one already in Justinian's time, as shown by the extraordinary fact of its being specifically quoted by the Emperor in 'Deo Auctore' (§10), the AD 530 constitution that ordered the compilation of the *Digest*. From a late 2nd century perspective, it was a small fragment on a rather specific question posed by the application of *leges Iulia et Papia*, lost in the immensity of the ninety books of Julian's *digesta*.²⁶

Rabbinic Literature

There are several passages from the rabbinic corpus which imply that Roman courts sometimes judged according to Jewish law. Any attempt to analyse these, however, brings us squarely up against the problems of using such texts as evidence in historical discussions.²⁷ The standard cautions are worth repetition. First, as in the case of the Roman legal writings, many of the works in question were redacted much later than our current period and, while they may attribute traditions to past sages, this does not guarantee the dating of a particular passage. Secondly, the rabbinic authors of such passages were not necessarily interested in presenting an accurate reflection of their contemporary society. Indeed, the preferences and aims of the rabbis and compilers must always be kept in mind, as well as the

²⁴ Humfress (2011: 26; see 26–9 for the full discussion of D.1.3.32).

²⁵ Humfress (2011: 29). ²⁶ Alonso (2013: 385).

²⁷ For an excellent summary of the problems, see Alexander (2010).

purpose of any particular work. This, of course, is an issue which is not unique to rabbinic material, but due to the nature of these texts it is particularly pertinent in relation to them.

The key passage on this subject is from the *Mekhilta de Rabbi Ishmael*, a halakhic midrash on Exodus, redacted in the third or fourth century CE. This saying is attributed to the late first-century sage, Rabbi Eleazar ben Azariah. It appears to give some information about non-Jewish courts deciding on the basis of Jewish law:

רבי אלעזר בן עזריה אומר והרי הגוים שדנו בדיני ישראל שומע אני יהיו דיניהם קיימים ת"ל
ואלה המשפטים אשר תשים לפניהם אתה דן את שלהם והם אינן דנין את שלך מכאן אמרו גט
המעושה בישראל כשר ובגוים פסול אבל גוים חובטין אותו ואומרים לו עשה מה שישראל
אומרים לך

R. Eleazar the son of Azariah says: Now suppose the gentile courts judge according to the laws of Israel. I might understand that their decisions are valid. But Scripture says: 'And these are the ordinances which thou shalt set before them.' You may judge their cases, but they may not judge your cases. On the basis of this interpretation the sages said: A bill of divorce given by force, if by Israelitish authority is valid, but if by gentile authority is not valid. It is, however, valid if the Gentiles merely bind the husband over and say to him: 'Do as the Israelites tell thee.'²⁸

A corresponding passage from the *Mishnah* offers a similar interpretation: a bill of divorce given by force is valid if ordered by a Jewish court, invalid if by a court of the gentiles.²⁹ Alfredo Rabello, in an article on Jewish and Roman jurisdiction, interpreted the *Mekhilta* passage as follows:

Thus we understand from Rabbi Eleazar's words that non-Jews (i.e. Roman courts) were indeed allowed to judge Jews. According to which law did the Roman courts judge the Jews? The answer to this question can also be found in Rabbi Eleazar ben Azariah's words: generally they had to pass judgments according to the local law, i.e. in this case the national laws of the Jews (*iudaei*): 'The non-Jews passed judgments according to the laws of Israel.'³⁰

²⁸ *Mekhilta de Rabbi Ishmael*, Exodus 21:1–3, *Nezikin* 1. Text and translation from Lauterbach (2004). See also *b. Git.* 88a, a saying attributed to Rabbi Tarfon, another late first-century sage, who forbids recourse to gentile courts, even if their law is the same as Israelite law.

²⁹ *m. Git.* 9:8. For instances in which Roman courts seem to be enforcing the decisions of Jewish ones, see Levine (1979: 656, n. 36).

³⁰ Rabello (1996a: 146).

This may sometimes, even often, have been the case, but it is not the only available interpretation of the above passage, and indeed the text does not support such a definite conclusion in and of itself. Underlying the passage is a sense of encouragement of separation: Rabbi Eleazar is attempting to discourage Jews from using gentile courts.³¹ Consequently, even if these courts give their decisions according to Jewish law, there is still no excuse for using them. This may be a theoretical idea: Rabbi Eleazar, in discouraging Jews from having recourse to gentile courts, anticipates any possible excuse that might be offered—he is arguing all angles in an attempt to achieve his purpose and safeguard the primacy of Jewish courts. In other words, the prescriptive purpose of the passage is more important than a concern to describe realistically. Alternatively, as Rabello reads it, this might be a reflection of historical reality. Perhaps some Jews were turning to gentile courts, and those courts, on occasion, might give judgment according to what they saw as local law or custom—Jewish law. It should, however, be noted that the text refers to gentile—not specifically Roman—courts; Rabello, in his interpretation, went a little too far.

It should also be noted that there is a possible discrepancy here in how the rabbis in this passage view ‘law’ and the more flexible approach to it taken by Babatha and those like her in Roman Arabia. The strict distinction made between ‘you’ (the rabbis) and ‘them’ in the passages—particularly in how the scriptural citation (Exodus 21:1) is interpreted—conveys a strong ideological message on the rabbis’ part: scripture—and because of the status of the Torah in these circles, this amounts to divine authority—states that they themselves have the right to judge members of their own community as well as any gentiles who choose to submit to their authority. Yet the reverse can never be true, since gentiles have no such divine sanction (as conveyed through scripture). This would suggest that different attitudes towards the nature and status of ‘law’ could coexist among Jews, or—if we stick only to the redaction date of the text rather than dating according to the sage involved—had changed from the early second century to the late third/early fourth. In any case, the variance is worth noting.³²

³¹ Indeed, rabbinic law did not allow non-Jews to be judges (see *m. Sanh.* 4:2; *b. Sanh.* 36b, *b. Kid.* 76b).

³² My thanks are due to Dr Alison Salvesen for drawing my attention to the complexities of this passage.

The primary point, however, is that such passages are far from conclusive, and we cannot rest much upon them in terms of the status of Jewish 'law', 'custom', or 'tradition' among non-Jews in the early second century. About as far as we may go is that certain rabbis could conceive the possibility that gentile courts in Palestine might have taken Jewish law into account when making their decisions. Pinpointing this to a particular period or broadening its application beyond Roman Palestine would create still further problems.

Pliny's Letters

Long beloved of historians of the provinces, Pliny's letters to Trajan during his governorship of Pontus et Bithynia (111–13 CE) offer valuable insight into the writer's views on the running of a province, including the administration of justice. While these letters provide a certain amount of evidence of real decisions, Pliny is also concerned to project an image of a good, conscientious governor in his correspondence, and this must at all times be kept in mind.³³ It is, for example, notable that many of the cases on which Pliny consults the emperor relate to prestigious individuals or entire towns, rather than to the everyday petitions of those lower down the social ladder. Nevertheless, they still offer us a window into the perspective of one particular Roman official in administering a province, and on how he claims to have made judicial decisions as part of his duties.

Trajan's preference for allowing local custom or law to prevail is well known, and there are indeed a number of cases where Trajan replies to Pliny's queries by referring him to the practices of the particular place.³⁴ Nevertheless, the letters reveal that Trajan's decisions are far from uniform. A couple of examples will serve to make

³³ On how to read the letters and negotiating the balance between 'the Kyanean Rocks of naïve literalism and of schematic post-colonialist readings', see Woolf (2006).

³⁴ For example, in *Epistulae* 10.75–6, Pliny is to decide how to administer an estate 'according to what will suit the conditions of both places' (*secundum cuiusque loci condicionem*) (10.76); in 10.92–3, Trajan allows the city of Amisus to have a benefit society because Pliny informs him that the town 'enjoys the privilege of administering its own laws' (*Amisenorum civitas et libera et foederata beneficio indulgentiae tuae legibus suis utitur*) (10.92), although he is explicit that in other cities without such a privilege the society would be prohibited; in 10.112–13, Trajan refuses to lay down general guidelines about whether those on councils should pay an admittance fee, stating, 'I think then that the safest course, as always, is to keep to the law of each city' (*id ergo, quod semper tutissimum est, sequendam cuiusque civitatis legem puto*) (10.113).

the point: in *Epistulae* 10.114, Pliny consults the emperor over an ambiguity in the *lex provinciae* about whether citizens of other Bithynian cities may become members of the senate,³⁵ stating that several people in each city were in such a situation. Trajan effects a compromise between custom and law: existing senators who were citizens of other cities may retain their position, but in future the law should be enforced.³⁶ This is not quite as simple as deciding in favour of local practice. Instead, it is a pragmatic resolution of the current problem, taking into account actual practice, but also enforcing what Trajan understands as the letter of the law. In another case, when Pliny consults Trajan about whether a temple in Nicomedia, dedicated in local fashion, may be removed,³⁷ Trajan has no hesitation in allowing it: 'as the soil of an alien country is not capable of being consecrated according to our laws'.³⁸ This is hardly a prime example of respect for local traditions, since local consecration practice is here set at naught.

Most interesting, however, is the case of the Christians (*Epistulae* 10.96–7). The legality of Pliny's actions has been frequently discussed and will not be the primary concern here. What is of issue is the way in which he proceeds. As Georgy Kantor has recently pointed out, the question is:

What was the notion of legality and the functions of legal administration which, on the one hand, allowed a painstakingly conscientious man (as Pliny appears to be throughout the rest of his official correspondence) to pass a death sentence without ascertaining the precise state of the law on the matter, and on the other, from well before Pliny's time, gave a significant place to legal rules and their interpretation?³⁹

Indeed, although Pliny seems firm in his certainty that he has the right to pronounce a capital sentence on these non-citizen Christians,

³⁵ The *lex Pompeia* allowed Bithynian cities to bestow citizenship upon whomever they wished, as long as the person in question was not a citizen of another city in the province, and also laid out the rules for expelling members of the senate. The question was whether being a citizen of another city disqualified a person from senate membership (not explicitly stated in the *lex Pompeia*). According to Pliny, there were several members of the senate in all the cities who would be affected by any decision: see Pliny, *Epistulae* 10.114.

³⁶ Pliny, *Epistulae* 10.115.

³⁷ Pliny, *Epistulae* 10.49.

³⁸ Pliny, *Epistulae* 10.50: *cum solum peregrinae civitatis capax non sit dedicationis, quae fit nostro iure*.

³⁹ Kantor (2012: 55–6).

he freely admits his ignorance as to the precise scope of his power or the procedure he should follow:

Cognitionibus de Christianis interfui numquam: ideo nescio quid et quatenus aut puniri soleat aut quaeri. Nec mediocriter haesitavi, sitne aliquod discrimen aetatum, an quamlibet teneri nihil a robustioribus differant; detur paenitentiae venia, an ei, qui omnino Christianus fuit, desisse non prosit; nomen ipsum, si flagitiis careat, an flagitia cohaerentia nomini puniantur.

I have never been present at an examination of Christians. Consequently, I do not know what offences or to what extent it is customary to punish or investigate. Nor am I at all sure whether any distinction should be made between them on the grounds of age, or if young people and adults should be treated alike; whether a pardon ought to be granted for repentance, or if he who has once professed Christianity shall gain nothing by renouncing it; and whether it is the mere name which is punishable, even if innocent of crime, or rather the crimes associated with the name.⁴⁰

It should be noted that the questions Pliny has are about the nature and extent of the punishments and not the fact that there is a crime to be punished here. But despite this, Kantor's question stands: Pliny still proceeds as he thinks best, even to the point of having some provincials executed, without being entirely certain about the state of the law and the exact punishment he should mandate. He consults Trajan about whether he has acted correctly only after the fact. In this instance, then, I would argue that the governor has proceeded entirely on his own terms. He makes an effort to find out about correct procedure, if there is one, only after he has made certain initial decisions on the problem. Ignorance of the niceties of the law is not a bar to action.

This may be a rather extraordinary case, but it does demonstrate that even a seemingly conscientious governor could sometimes make decisions entirely of his own will. Pliny frequently consults both people (including Trajan) and documents, and even consults people about documents in his correspondence, but he is still willing to proceed unilaterally here. This demonstrates the lack of predictability in a governor's actions. He may try to find out about and take into

⁴⁰ Pliny, *Epistulae* 10.96. Translation adapted from the Loeb edition.

account local practice or precedent, but he was also willing to proceed without cognizance of it. Conscientiousness was not guaranteed and litigants could find themselves with an unexpected verdict.

Papyri

There are countless legal papyri from Egypt which bear upon our problem. These papyri differ slightly from our previous categories of evidence in that they offer a definite record of real decisions. This does not stop people from using rhetoric in their appeals or in discussing such judgments but we can at least separate some of this from the actual decision given.

Nevertheless, the papyri also have their limits, not least in the fact that there was no necessity for the official in question to explain his reasoning in deciding one way or the other. Often all that is recorded is the decision—allowing a petition to proceed, for example. We are, therefore, left to try to draw out the reasoning that led to it, which can prove a rather tricky task. In general, however, there is an evident tendency on the part of Roman officials to try to find out about local custom or law and thus consider it in pronouncing judgment; more than this, it appears to have been applied quite often in Roman courts.⁴¹ One of the ways in which this is made apparent is in the frequent consultation of νομικοί that we find in the sources:⁴² the judges make a very real effort to learn about ‘normal’ practice in the area by consulting those who may know about it.

This does not, however, mean that they would necessarily judge in accordance with it. A notable case in which indigenous law is rejected is that of the ‘Law of the Egyptians’, cited in the previously discussed Dionysia papyrus, P. Oxy. 2. 237, written around 186 CE.⁴³ In battling her father’s attempt to invoke this ‘law’ and forcibly remove her from

⁴¹ Alonso (2013: 352) has probably formulated it most strongly: ‘The usual term “tolerance” is insufficient here. Peregrine law was not merely tolerated but unfailingly applied by the Roman courts, even when it challenged the most basic Roman principles.’ Alonso references extensive bibliography, which will not be repeated here, but the earlier works of Taubenschlag (1929) and Anagnostou-Canas (1991: 253–68) should probably be mentioned.

⁴² See Chapter 3, p. 91, n. 12, for examples.

⁴³ The bibliography on this papyrus is extremely large and constantly growing. Three recent contributions which relate well to the themes of the current discussion are Humfress (forthcoming), Kreuzsaler and Urbanik (2008), and Bryen (2013: 144–6, 192–9).

her husband, Dionysia cites several previous cases. One of these is a case from 128 CE, in which the prefect, T. Flavius Titianus, overrules the Egyptian law that permitted a father to remove his daughter from her husband, stating that it should depend upon the desire of the wife. Here is a clear case of the prefect being made aware of local custom/law (or what was claimed to be local law) and nevertheless deciding to disregard it. This decision was subsequently used as precedent in another case in 134 CE, also cited by Dionysia, and she in turn attempts to use both cases as precedent for her own situation.⁴⁴ The reason for this judgment was possibly that the tenor of the law was antithetical to those governing Roman marriage, where the presence of *affectio maritalis* was sufficient to effect or dissolve the nuptials. Indeed, Claudia Kreuzsaler and Jakub Urbanik have pointed out that there is some hint by the advocates of Heron, the husband in the 134 CE case, that this was so: when citing the prior decision, they state that Titianus ‘did not follow the inhumanity of the law’.⁴⁵ The argument, then, seems to be that if a law was considered to embody *inhumanitas*, as exhibited by its opposition to Roman law on the subject, it might be overruled.⁴⁶ What was presented as indigenous law could, then, be overturned if it did not sit well with Roman legal or indeed cultural ideals.

This lent a definite element of unpredictability to the process. Litigants were left somewhat uncertain about the way their case might go. Pleas citing local tradition, custom, or law were likely to carry some weight with Romans but there was no guarantee that they would prevail.

Levels of Knowledge: How Did Roman Judges Find out about the Law?

It is worth pointing out that Roman judges were never guaranteed to be legal experts. They may have had more or less experience in this field from their career in Rome: from an earlier period, of course, we

⁴⁴ On precedent in the Roman legal process, see Katzoff (1972); especially Katzoff (1972: 257–68) on this papyrus and the cases therein. A further example, also cited and discussed by Katzoff (1972: 265), is constituted by the unsuccessful attempts to oppose custom with tax law: P. Phil. 1 (c.103–24 CE), SB 5. 7601 (135 CE); SB 5. 7696 (250 CE).

⁴⁵ P. Oxy. 2. 237, col. 7, ll. 34–5: *μη̃ ἡκολουθηκέναι τῇ τοῦ νόμου ἀπανθρωπία*. See Kreuzsaler and Urbanik (2008: 141) for this interpretation.

⁴⁶ See Kreuzsaler and Urbanik (2008) for a study of the rhetoric of this plea and the role of *humanitas/inhumanitas* in Roman law.

have the prime example of Cicero, who would have brought his legal experience with him to his province.⁴⁷ Some Romans may have known their legal literature well and drawn upon this when judging: one inscription from Ephesos, admittedly from the late third century CE, records a letter that is probably from the Roman governor, in which he refers provincials explicitly to Ulpian's *De officiis*.⁴⁸ On the other hand, as Brunt has observed, the vast majority of prefects of Egypt probably had very little legal experience.⁴⁹ Even when officials did have previous experience, the law they now had to apply was probably different from that which they had been used to in Rome.⁵⁰ It is, therefore, worth examining in more detail exactly how Roman judges in the provinces came by their legal knowledge and whom or what they consulted when their own knowledge failed them. This in turn may further illuminate the decision-making process.

The governor had a *consilium*, whose members were normally picked by him and could advise him when making decisions.⁵¹ The evidence for the composition of such *consilia* is sparse and probably

⁴⁷ In an article which focused on Cicero's era, Urch (1929: 94) confidently observed that 'The governors were invariably familiar with the law and procedure of the courts at Rome, as a result of actual experience as presidents of those courts.' More recently Ando (2011: 10–11) has suggested that 'Roman magistrates, schooled in Roman law and culture and alien, as it were, to the local cultures that they governed, would have turned quickly to the familiar over against the foreign.'

⁴⁸ Keil and Maresch (1960) no. 8, ll. 8–10; I. Ephesos 2. 217. See Kantor (2009: 250–5) for comments. The reference is partly restored: the text reads ἐν τοῖς Δῆ ὁφί[κους παρ'] Οὐλιανῶ. This restoration, that of the original editors, seems the most plausible and would mean the reference was not just to the *De officio proconsulis* but other manuals by the same author: see Kantor's (2009: 251–2) comments.

⁴⁹ Brunt (1975: 132–6); more generally see Peachin (1996: 33–65) on the lack of legal training of most of the empire's judges; see also Harries (1999: 102–3) on the 'amateurish nature of the early imperial judicial system'. See also Pap. *Digest* 26.2.26 *pr* (4 resp.), in which it is stated that if a provincial governor has decided 'through inexperience' (*imperitia lapsus*) to uphold the will of a father and make a mother guardian of their common children, his successor should not follow this (since it is not allowed by 'our laws' (*leges nostrae*)). This could be taken to evidence a lack of legal knowledge or experience. However, see the detailed discussions by Chiusi (1994: 173–5) and Oudshoorn (2007: 342–4) on how we should read this passage.

⁵⁰ Richardson (1976: 34). See the comments on the *lex provinciae* on p. 170 above.

⁵¹ See Weaver (2002) on the composition of *consilia*. It seems that governors were expected to consult their *consilia*: one of the points of censure against Piso in his trial for the murder of Germanicus is that he had condemned people to death without consulting his *consilium* (*senatus consulta de Cn. Pisone patre*, ll. 49–51). The text is published in Eck, Caballos, and Fernández (1996) and an English translation may be found in Griffin (1997: 250–3)).

varied from province to province.⁵² The level of legal expertise on the *consilium* will, therefore, likewise have differed. Paul Weaver's analysis of the available evidence suggests that members were often relatively young and of low status (though were Roman citizens)⁵³—this does not necessarily lend itself to the theory that *consilia* always provided a wealth of legal experience.⁵⁴ To take one example: in a papyrus from Egypt that preserves the court records of three decisions of the prefect Sulpicius Similis (late second century CE), Similis is said to have consulted both a legal expert and his advisors.⁵⁵ This suggests that additional legal advice was needed besides the *consilium* and indeed that the *ἐξηγούμενος τοὺς νόμους* was not included among the *consilium* members. As such, *consilia* may not always have been a source of specific advice on points of law.

As suggested by this papyrus, however, there were others who could provide such expertise. The consultation of legal experts, often called *νομικοί*, is fairly well attested in the Egyptian papyri and was seemingly relatively normal practice.⁵⁶ Brunt suggests that these were mainly consulted about local law, in earlier instances at least, and did not supplement the Roman officials' knowledge of Roman law:⁵⁷ in fact, we do seem to have examples of such *νομικοί* being consulted on Roman law.⁵⁸ In any case, as previously suggested,

⁵² Hadrian is reported to have included jurists on his *consilium*, instead of just friends and staff-members (*Historia Augusta* 18.1). The fact that this inclusion was noted may imply that it was an unusual step.

⁵³ Weaver (2002: 51–9).

⁵⁴ Although see Kantor (2013a: 150–2) on the young age of certain legal practitioners in Roman Phrygia—youth did not necessarily equate to a lack of legal knowledge.

⁵⁵ P. Oxy. 42. 3015, ll. 8–11: 'Sulpicius Similis, after talking with his advisers and referring the case to Artemidorus, the interpreter of the laws' (Σουλ(π)ίκιος) Σίμιλις πυθόμενος Ἀρτεμιδώρου τοῦ ἐξηγουμένου τῶ[υ]ς νόμους περὶ τοῦ πράγματος καὶ συναλῆσας τοῖς συμ[β]ούλοις). Text and translation (slightly adapted) from Parsons (1974).

⁵⁶ See Chapter 3, p. 91, n. 12, and n. 55 for examples. See Kantor (2009) more generally for the argument that these advisors and legal literature played a large role in transmitting knowledge of law in Asia Minor.

⁵⁷ Brunt (1975: 134): 'The papyri show prefects under Vespasian and Trajan discussing their judgments with *νομικοί*, but in the earlier instances the lawyers are Greeks concerned with local laws—the prefects appear to be entirely dependent on them for knowledge of what these laws prescribe—and in the last the issue is elementary.'

⁵⁸ For example, BGU 2. 388 (= M. Chr. 91) (late second or early third century CE). See Chapter 3, p. 91, n. 12, for further discussion.

consultation about local law implies interest in it. This did not mean that governors were guaranteed to judge in accordance with local practice, but it suggests that it was taken into account when they were coming to their decisions.

Aside from consulting people, Roman officials also seem to have had frequent recourse to documents.⁵⁹ Indeed, Pliny often refers to documentation in his correspondence: in the case of the foundlings, for example, he claims that, before consulting Trajan, he heard the rulings of previous emperors read out in court and searched for those relevant to Bithynia.⁶⁰ Furthermore, litigants often bring documents to him: the case of Flavius Archippus is a particularly nice example of this. Archippus was a philosopher who claimed the right to be excused from acting as a juror due to his profession. He was then accused of having escaped when he was previously tried and condemned for forgery. His sentencing by the proconsul Velius Paullus was read out. In response, Archippus produced a petition to Domitian, honorific letters from the latter, a decree of the Prusensians, a letter from Trajan, and an edict and letter from Nerva confirming Domitian's grants to him. Some of these are included in Pliny's letter to Trajan. All this amounts to a large amount of documentation supplied both by the prosecution and by Archippus in order to support his case.⁶¹ While such paperwork is not always included in Pliny's letters to Trajan, this presentation of supporting paperwork by the litigants is not unusual. And whilst in this instance Pliny referred the matter, Trajan, in his response, seems to have based his decision on an interpretation of the documents supplied. It therefore appears that such documentation could be extremely

⁵⁹ For an overview of the use of *tabulae* and other documents in Roman courts, see Meyer (2004: 216–49).

⁶⁰ Pliny, *Epistulae* 10.65: 'I have heard the orders of your predecessors read in court, but was unable to find either a particular case or a general rule which could apply to Bithynia' (*in qua ego auditis constitutionibus principum, quia nihil inveniebam aut proprium aut universale, quod ad Bithynos referretur*). Trajan, in turn, claims to have examined the archives in Rome on the subject (10.66). Pliny also expressed concern that the documents in question are badly copied and might be forgeries; this seems to reinforce the idea that governors placed great store on documents, to the extent that Pliny wished to check their authenticity. See also *Epistulae* 10.72 for another case in which Pliny seems to have consulted archives, and, indeed, Trajan requests a copy of a decree under discussion (10.73).

⁶¹ Pliny, *Epistulae* 10.58. Trajan's response, *Epistulae* 10.60, is in favour of Archippus.

useful to a Roman official in making decisions, even to the ultimate judge—the emperor himself.

This is supported by the papyrological evidence. Both Herbert Jolowicz and Ranon Katzoff have made compelling cases for the importance of precedents in the Egyptian papyri, which the latter observes are usually cited as part of a ‘law and application’ pattern.⁶² The manner in which these precedents were cited often amounts to the inclusion of records of previous decisions, petitions, or even the opinions of νομικοί. The Dionysia papyrus is, once again, a lovely example of this, where Dionysia is careful to collect previous decisions that support her case and include these in her petition; her father also seems to have included documents when he brought his case. Although we do not know how her own case turned out, we can make certain inferences from when the original decision of the prefect T. Flavius Titianus was cited in the subsequent case heard by Paconius Felix in 134 CE. This was brought forth by the advocates for Heron (the husband), when his wife’s father was trying to invoke the Egyptian law and remove his daughter from her husband. Felix, upon hearing the law, decides in Heron’s favour and explicitly states that this is in accordance with the decision of Titianus.⁶³ This means that the documentation brought forth by Heron’s advocates had some effect on how the judgment was made. Such documentation did not have to be limited to past decisions: it could, for example, include the opinions of νομικοί. The point, however, is that judges seem to have used, and even heavily relied upon, the information presented to them in making their decisions.⁶⁴

⁶² Jolowicz (1937) and Katzoff (1972). See also Anagnostou-Canas (2004) and Metzger (2004: *passim*, but especially 250–60) for an overview of previous scholarship.

⁶³ P. Oxy. 2. 237, col. vii, l. 37.

⁶⁴ Unfortunately, as in the case of Dionysia, we do not often have a record of these decisions, or, when we do, the judgment alone is recorded without any reasons for it, which judges were by no means obliged to provide. This limits our ability to assess how they interpreted such documents. For example, in P. Ryl. 2. 76 (late second century CE), an offer is made to read out precedents, yet no decision on the case is recorded; thus, we can say little about the effect of such citations. We know a little more for Sel. Pap. 2. 260 (173 CE (?)), in which copies of prior decisions are included; this petition was indeed approved by the ἐπιστράτηγος but no reason for his decision was given. Similarly, the precedent that Apollonarion cited in P. Oxy. 6. 899 (= W. Chr. 361) (200 CE) in order to gain an exemption from cultivating crown land seems to have had a favourable effect; we may infer this from the fact that the διοικητής, to whom the papyrus was addressed, agreed to pass it on to the acting στρατηγός rather than dismissing it outright (see Katzoff’s (1972: 268–9) discussion

This information could, however, be conflicting. P. Mich. Inv. No. 148, another papyrus from Egypt, dated to the late second or early third century, includes on the verso a series of three *ὑπομνηματισμοί* which relate to the purchase rights of partners when a piece of jointly held property was sold.⁶⁵ These appear to cite conflicting rules: we have statements to the effect that the seller must grant the first right of refusal to partners; that he is allowed to sell to whomsoever he so wishes; and finally that he must sell to partners. The most interesting pieces of evidence from this papyrus, however, concern how judges should deal with such conflicting precedents. In one of the *ὑπομνηματισμοί*, both the advocate for the plaintiff and the judge himself attach great importance to a recent decision made by a higher official, suggesting rulings by superiors would be very welcome in cases of conflicting precedents. Furthermore, in the final *ὑπομνηματισμός*, we find specific guidelines for dealing with such situations. These were requested by Apollonius from the prefect Mamertinus (133–7 CE). Apollonius was advised to follow the majority of the precedents.⁶⁶ This seems, indeed, a sensible course that may even have been something of a default for judges without similar instructions from a superior. The point remains, then, that presenting relevant information—and apparently as much of it as possible—was vital in swaying a judge one way or another.

The time pressures that governors faced offer further support for this hypothesis. P. Oxy. 17. 2131, a petition from an Oxyrhynchite that was submitted at an assize session in 207 CE, has the file number 1,009, suggesting a huge number of cases. Another papyrus from 209 CE records that a prefect in the Arsinoite nome received 1,804 petitions in a three-day period.⁶⁷ Naphtali Lewis calculated that, based upon a ten-hour working day, this means that the petitions were handed in ‘at a rate of better than one a minute for the entire ten-hour period’.⁶⁸ His officials, of course, would have handled the majority of these on the day, referring to him only those which were particularly unusual or important, though he and his staff had to answer them

of this papyrus). Thus, though our information is limited, documents do seem to have had an impact on certain judges.

⁶⁵ Youtie (1977: 126) is clear on the nature of these records: ‘These documents were of course intended to assist a judge in arriving at a decision favourable to an advocate’s clients; they are offered as precedents supporting the desired judgment.’

⁶⁶ Youtie (1977: 127) points out, however, that an imperial edict trumped all.

⁶⁷ P. Yale 1.61, l. 7. ⁶⁸ Lewis (1983: 190).

subsequently. This still probably leaves an immense workload, and we may wonder how this translated in a newer, perhaps less demanding, but certainly less well-staffed province like Roman Arabia. Faced with this sheer volume of work, it is doubtful how much careful consideration each case was really given. Governors, especially those with some legal experience, may have relied on their own knowledge, however limited, to decide cases quickly and therefore made mistakes—both from the point of view of the litigants, the advisors who knew the law better, and indeed from our own perspective in light of the codified bodies of Roman law we now possess. Additionally, I would argue that this time pressure makes it even more likely that the officials relied on information provided to them by eager petitioners and litigants in order to make a decision quickly—so precedents and other helpful documents were very important in influencing this decision-making process.⁶⁹

This in turn also makes it probable that litigants would try to take into account the Romans' perceived preferences when drawing up their documents: presentation was important. Even those contracts which provincials did not originally intend to come before a Roman court might be drawn up with this possibility at the back of their minds. They might need to be cited in future cases. As such, a Greek or Romanized document would be more immediately comprehensible to the governor and his staff than one written in an indigenous language and would probably speed up the potentially long court process. Given the importance of documentation in court, it made sense to start to factor their preferences into any documents in case they ever ended up being instrumental in a complaint.

⁶⁹ Jolowicz (1937: 14) reached a similar conclusion: parties had to produce 'authority' because their judges were not professional lawyers. Ando (2000: 380) argues from the evidence of court proceedings and personal archives in Egypt that 'Individuals kept such documents because they had faith in the rationality of the Roman administration. They believed that it would abide by its established rules, whether they liked those rules or not.' I would suggest that this belief was coupled with a fear of the result had litigants failed to produce such supporting paperwork; doing so was an attempt to bind and control the Roman officials. As argued throughout this chapter, there was, however, no guarantee that the Roman official in question would indeed abide by the rules—this might be a probability but not a certainty. Furthermore, it may be that, while such a strong faith in Roman rationality existed in an older province such as Egypt, it was yet to be so firmly established in the more recently annexed Roman Arabia.

Thus, Roman officials who exercised jurisdiction in the provinces were unlikely to all be legal experts. Even if they had experience in Roman law, this did not make them skilled or knowledgeable in that of the province in which they operated. They relied on the documentation presented to them, the advice of others, and their own cultural preconceptions in order to judge cases. Sometimes they might take into account local law or circumstance; sometimes they would disregard it. This made the courtroom a place of uncertainty and meant that litigants, even with legal advice, would have a hard time predicting the outcome of their cases.⁷⁰

This uncertainty about how Romans might judge opened up space for negotiation in a courtroom situation. In Ari Bryen's words: 'When no one is precisely sure what is happening, a space is opened up in which provincial populations can assert their own understandings of the system itself, and how it should work.'⁷¹ The parties themselves, as we have seen in the two archives, did not have a thoroughgoing knowledge of law. The governor, likewise, had his own pockets of knowledge and ignorance. He would, therefore, assess the competing claims and understandings of the litigants as and when he was confronted by them in light of his own knowledge (or lack thereof), advice, and interpretations. But what effect did this atmosphere of uncertainty, coupled with the cost and inconvenience of the Roman system, have on the way cases progressed in Roman Arabia?

THE ROMAN GOVERNOR IN THE ARCHIVES

Much of the archival material, on a surface level at least, appears to have been aimed at the governor's court. But in light of the various processes of arbitration and negotiation touched upon in Chapter 5, we should consider very carefully whether these cases really did end up before Roman judges. If various options were available to litigants, then just because they availed themselves of one of these—i.e. the governor's court—does not mean that they had automatically opted out of others.

⁷⁰ See Dolganov's (forthcoming: 24) observations on the specific case of Dionysia: 'the outcome was unpredictable' and 'there was no fixed policy on this issue [*patria potestas* and marriage]'.
⁷¹ Bryen (2012: 801–2).

Thus, any examination of the Roman officials must go beyond examining what happened in a Roman provincial court and consider the wider implications of the Roman presence on provincial legal life.

The governor is often mentioned in the Babatha archive. There are two particular cases in which he appears regularly and which, therefore, seem to be destined for his court: Babatha's battle with the guardians of her son Jesus over his maintenance and the dispute over the property of her husband Judah after his death. Although we do not know how, or indeed even if, any Roman official eventually judged in these cases, we can say something about the initial decisions in allowing the cases to proceed. More significantly, by noting his presence and involvement, or lack thereof, in these two cases, it is possible to determine the effect that he had on the way that the disputes progressed. I have already laid out the basic framework of these two cases in the 'Case Studies' in Chapter 1, but they bear revisiting in light of the specific concerns of the present chapter. In returning to these cases, I wish to highlight the interactions of the various people involved in them, with a particular focus on the effect of the presence of the governor and his court in their exchanges: the aim is not to revisit once again previous interpretations or debates on these papyri. The idea here is to show how the availability of the Roman judicial system had an effect on the way that people conducted their legal disputes before they even reached a Roman courtroom, and trace the negotiation and intimidation tactics that went on throughout the process.

Before going any further, a couple of clarifications should be made. First, the governor was not the sole official responsible for the administration of justice in the provinces. He could delegate others to hear cases—tribunes and prefects from the army, for example. Within the Babatha archive there is one possible reference to a *iudex datus*, though this remains somewhat uncertain.⁷² Furthermore, procurators and

⁷² Cotton and Eck (2005: 42–4) argue for a possible identification of a *iudex datus* in P. Yadin 14: in the outer text, Julius Julianus is referred to as ἡγεμὼν (l. 30), the standard designation of a governor, while in the inner text, the name Julianus reappears two lines later than what would be the corresponding line, along with the start of what seems to be the title ἑπαρχος (l. 13). Cotton and Eck take this to mean that two different Julianuses are being referred to here: the one, the governor; the other, a *iudex datus*, i.e. a judge to whom the governor had given delegated jurisdiction—here, in view of the title, they suggest 'a prefect of an auxiliary unit stationed in the province'. While, as the authors point out, Julianus is a common name, I am unsure whether this can really be put down to any more than a scribal slip.

their juniors had jurisdiction over cases which fell within their administrative sphere. Non-Roman judges, *recuperatores*, could also be appointed—an attractive solution, as Cotton and Eck have pointed out, in an area where there was a lack of Roman citizens.⁷³ In short, although the governor was the supreme representative of justice in the province (with the emperor himself, of course, available for appeal in Rome), he was not the sole administrator. This is worth clarifying both as a general point and in reference to the documents themselves, which can appear to present a false image of the Roman governor in ‘splendid isolation’.⁷⁴ If the governor is referred to in the analysis below, it is because he is mentioned in the papyri. This is no guarantee that he personally saw the paperwork or heard the case.

Secondly, it is worth outlining the litigation procedure in Roman Arabia, as far as we may determine it from the Babatha archive. In Egypt, the plaintiff who wanted to bring his or her rival before the governor would send a petition to the official most accessible to him or her. Very often this was the *στρατηγός*. If this was accepted as a valid complaint, an officer of the *στρατηγός* would issue a summons to the defendant and the case would be put on the list to be heard or delegated at a forthcoming assizes session.⁷⁵ This does not seem to have happened in Roman Arabia, probably due to the lack of officials.⁷⁶ Instead, the party or his or her representative would first send a petition to the governor; the governor would then hopefully (from the petitioner’s point of view) issue a subscription allowing the case to continue; the original petitioner would subsequently issue a summons to the defendant, demanding that he or she attend the governor’s court.⁷⁷

⁷³ Cotton and Eck (2005: 28). Indeed, see *passim* for an excellent analysis of the roles played by other Roman officials in administering justice in Roman Arabia and a thorough debunking of the ‘splendid isolation’ impression. See also Lewis (1981) on the work of the prefect of Egypt, on which Lewis (1981: 128) concludes: ‘Whatever could not be processed without the prefect’s personal attention would be set aside for his consideration; everything else would be delegated to an appropriate agency.’ This seems like a reasonably sound working hypothesis for the involvement of governors more generally.

⁷⁴ Cotton and Eck (2005: 24); though see n. 72 for a possible *iudex datus*.

⁷⁵ See Burton (1975: 100) on this; Taubenschlag (1955: 499–502) and Lewis (1983: 187–90) offer more detailed accounts.

⁷⁶ Burton (1975: 100) in fact suggests this as a possible reason why the process in Egypt would not be followed elsewhere—it seems perfectly plausible for this case.

⁷⁷ See Harries (2010: 97), summarizing the process described by Cotton (1993: 106). Although there is no explicit mention of the governor’s subscription in the

Babatha vs. the Guardians

Pertinent Documents: P. Yadin 12–15, 27, 28–30

I have laid out the basic details of this dispute in Chapter 1, so the bare bones will suffice for now as a reminder, before turning to focus specifically on the level of the governor's involvement. After the death of Babatha's first husband, Jesus, the *βουλή* of Petra appointed two guardians for her orphaned son, also called Jesus, in the first half of 124 CE. The guardians were Abdoöbdas, son of Ellouthas, and John, son of Eglas. Later that year, Babatha petitioned the governor to complain that these men were paying an insufficient sum (P. Yadin 13). About a year later, she summoned before the governor just one of the guardians, John, son of Eglas, about the payment of her son's maintenance (P. Yadin 14). On the same day, P. Yadin 15—a *testatio* or 'deposition', as Lewis labelled it—was written to both guardians. Babatha here repeated an offer that she claims to have made previously and asked the guardians to hand over control of Jesus' property to her, promising to triple the interest. As security, she offered a hypothec on an equivalent amount of her own property.⁷⁸

The manner in which the case proceeded is not entirely straightforward, nor is determining the reaction of the Roman officials. From the fact that the summons (P. Yadin 14) was written, it seems as though the Romans granted Babatha's apparent request for a hearing in P. Yadin 13. There is a lengthy delay between the petition and the summons.⁷⁹ This may be accounted for by the time it took for the Roman governor to respond, perhaps followed by negotiation between Babatha and the guardians before she resorted to summoning John, son of Eglas. Abdoöbdas in the meantime may have come to some arrangement with her, meaning that she did not include him in the summons.⁸⁰

dispute over Jesus' maintenance, this pattern fits well with the evidence of the papyri about how the cases were conducted in both disputes.

⁷⁸ On the legalities of this case, see in particular Chiusi (2005) and (1994), and Cotton (1993).

⁷⁹ It should be noted that Chiusi (2005: 114) and (1994: 183) reads these documents as two separate issues, and denies that P. Yadin 13 was meant to open any kind of proceedings; P. Yadin 14, on the contrary, was meant to open a new lawsuit against just one guardian, John.

⁸⁰ See P. Yadin 14, ll. 26–9: 'On account of your not having given . . . to my son, the said orphan . . . just as Abdoöbdas son of Ellouthas, your colleague, has given by

Indeed, it seems clear that only one guardian was called and that this was not simply some procedural technicality:⁸¹ not only is he the only one mentioned in P. Yadin 14, but P. Yadin 15 confirms that only John has been called before the governor,⁸² 'for his refusal of disbursement of the maintenance money',⁸³ even though Babatha had deposed both *ἐπίτροποι*. The fact that she did not summon Abdoöbdas suggests that he had agreed to raise the maintenance, while John was still refusing to pay an amount that Babatha considered appropriate. Why, then, did she address her deposition to both guardians?

This, in fact, is a fairly logical move if she had previously had a private arrangement only with Abdoöbdas. The offer of the hypothec might, therefore, constitute a change in her arrangement with him as well as with John. Indeed, by deposing both guardians Babatha may have hoped that Abdoöbdas would exert some pressure on his colleague to accept and thereby perhaps improve his own position: it is possible that under the new arrangement he would have had added security.

The manner in which the case was resolved remains unknown to us. P. Yadin 27, written on 19 August 132 CE, provides us with a little information: it is a receipt for maintenance given by Babatha to Simon the hunchback, who has taken over from his father John, son of Eglas. The amount of maintenance paid is two denarii a month; this is the same amount that Babatha had once classed as insufficient. It is, however, a receipt issued to one guardian and therefore may mean that each of the guardians was now contributing two denarii per month, doubling the previous sum that Babatha had once deemed unsatisfactory.⁸⁴ Indeed, I am inclined to think that this receipt does suggest an alteration had been made. We cannot, however, say that this was the result of a decision made in the Roman court to which Babatha had previously appealed. It may just as well have been an arrangement reached by arbitration or similar negotiations

receipt' (διὰ τό σ'ε μὴ δε[δωκέ]ναι τῶ) υ[ί]ῳ μου + 10 τῶ αὐτῶ ὀρφανῶ ἐξ ὧ[ν] [...]. εστ. [...][καθ'απερ δέδωκεν Ἀβδοῦβδ'ας Ἐλλο[υ]θα ὁ κολλή[γ]ας σου] δι' ἀποχῆς). A comparison is therefore drawn between the two guardians, and Babatha emphatically only summons one before the governor.

⁸¹ See Lewis (1989: 54), who offers both possibilities.

⁸² While Babatha deposes both guardians, P. Yadin 15 is clear that she has only summoned John (ll. 11–2/28–9).

⁸³ P. Yadin 15, l. 11/28: *περὶ τῆς ἀπειθαρχείας ἀποδόσεως τῶν τροφίων*. See Chapter 1, p. 49, n. 84, for comments on Lewis' (1989: 61) translation.

⁸⁴ See discussion in Chiusi (2005: 116); see also Chiusi (1994: 184).

between the parties, a process which seems to have been occurring around the time that P. Yadin 14 and 15 were written.⁸⁵ These ongoing negotiations may even lend slight weight to the idea of a settlement outside of the Roman court.

What, then, may we say about the role of the governor in this process? We do not know whether he ever issued a judgment on the case, and I have suggested above that there is slight reason to think that he did not. We do know, however, that he allowed the complaint to proceed. This was not, in fact, strictly in line with Roman law, under which complaints against a *tutor* were only allowable once the minor had come of age.⁸⁶ It may, therefore, be that we have here an example of the governor deciding on the basis of evidence provided and the rhetoric of the petition—the case sounded like a plausible complaint and so was allowed to continue.

The primary point is that his presence and Babatha's invocation of him were meant to influence proceedings. She did not follow up her original petition with a summons for about a year—some of this time may be accounted for by waiting for the governor's response, but it also seems probable that some portion was spent in negotiation, during which an arrangement was reached with Abdoöbdas, though not John. Indeed, the fact that she states in P. Yadin 15 that she had made her proposition before also implies ongoing discussion.⁸⁷ Additionally, she implicitly suggests in this papyrus that, should the guardians agree to her offer, she would not proceed with the summons: 'Otherwise [i.e. if the guardians do not agree] this deposition will serve as documentary evidence of [your] profiteering from the money of the orphan by giving . . .'⁸⁸ The threat is: agree, or I shall proceed. Thus, the governor's presence and the possibility of proceeding to his judgment cast a shadow over the way the case progresses. His presence is used in this dispute at least as a threat and a bargaining chip.

⁸⁵ Further support might be added to this hypothesis if we accept the view that P. Yadin 28–30, the copies of the *actio tutelae* discussed at length in Chapter 3, were intended to be used in informal negotiations as a bargaining chip (see Chapter 3, pp. 102–4).

⁸⁶ D.27.3.4.pr (Paul, *Sabinus*, Book 8). See Cotton (1993: 105) for comments. The remedy available against such a fraudulent guardian was that of removal; this would be instituted by the praetors at Rome and the governors in the provinces (see D.26.10.1.3 (Ulpian, *Edict*, Book 35)). As far as we can tell from the fragmentary P. Yadin 13, this does not seem to be what Babatha is requesting.

⁸⁷ P. Yadin 15, ll. 8–10/24–6.

⁸⁸ P. Yadin 15, ll. 29–30: *εἰ δὲ μή, ἔσται τοῦτο [τὸ μαρτυρο]πρόλημα εἰς δικαίωμα κέρδους ἀργυρίου τοῦ ὀρφανοῦ εἰ διδόντες . . .* (cf. ll. 12–13).

Judah's Estate

*Pertinent Documents: P. Yadin 20–6, P. Yadin 34
(Fragmentary)*

At some point after P. Yadin 19 was written on 16 April 128 CE and probably before P. Yadin 20 was drawn up on 19 June 130 CE, Babatha's husband Judah died. Jesus, his brother, also died at some point before 19 June 130 CE. Judah was survived by Babatha, his married daughter, Shelamzion, and another wife, Miriam. His brother Jesus had two, now orphaned, children. The guardians of these children, Besas, son of Jesus, and Julia Crispina were involved in a legal dispute with Babatha and Shelamzion over some of Judah's property, to which they claimed the orphans had a right. Their dispute with Shelamzion seems to have been settled fairly quickly, as in P. Yadin 20 they concede her right to a courtyard that they had presumably previously claimed. As part of their concession in this document, they offer to register the courtyard to her *διὰ δημοσίων/διὰ δημοσίων*, 'with the public authorities' or 'in the archives' (P. Yadin 20, l. 13/35–6), and to defend her against any counter-claims for the courtyard. It seems, then, that they had previously challenged her right to the property and had later backed down. This certainly represents some kind of negotiation between the parties, though we cannot tell whether the guardians ever went so far as to petition the governor on the matter before relinquishing their claim. This was perhaps improbable: Shelamzion more probably was simply able to provide them with convincing enough proof of her right to this courtyard when requested.

Their battle with Babatha, however, was more prolonged. In addition to this, there was also another dispute between Babatha and Miriam, documented in P. Yadin 26 and P. Yadin 34. Not all of these documents relate to or mention the governor's court directly. Some simply pertain to the property involved in the dispute. My focus here will be on those in which the governor is directly invoked, and the remaining documents will be mentioned when relevant.

The first document in this series in which the governor is explicitly mentioned is P. Yadin 23, written on 17 November 130 CE. In this papyrus, Besas summons Babatha over a date orchard which he claims she now holds by force (*βία*);⁸⁹ this is presumably the same

⁸⁹ P. Yadin 23, l. 6/17.

property whose crop is the subject of P. Yadin 21 and 22, and which Babatha in these documents claims she owns 'in lieu of my dowry and my debt'.⁹⁰ He orders her to attend the governor's court in Petra or elsewhere every day until they are heard. This gives a brief glimpse into the hassle of taking cases to the governor (mentioned above, p. 168) which potentially involved substantial travel and time. Factor in accommodation costs while waiting in Petra, and the expense might soon look considerable.

Besas had presumably submitted a petition to the governor which had been allowed to proceed, though there is no mention of his subscription in this papyrus. The phraseology of P. Yadin 23, which refers to unlawful possession by force, is hardly an unfamiliar concept to Roman law.⁹¹ If, then, Besas, or rather his scribe/advisor, had phrased his petition to the governor in a similar manner to the way in which he did in this summons, the official who read it would have been dealing with a fairly familiar complaint and probably allowed the claim to continue on this basis, regardless, indeed, of the operative inheritance law upon which Besas' contention was founded.⁹² The rhetoric, therefore, seems to have been designed to appeal to a Roman mentality.

In conjunction with P. Yadin 23, we have P. Yadin 24, a deposition. The two documents seem to have a similar relationship to P. Yadin 14 and 15 (discussed above, pp. 190–1). Besas demanded that Babatha say by what right she held the date orchards, though he also acknowledged that Judah had registered them to her. He threatened to re-register them instead in the orphans' names, should she refuse to state the basis of her claim to them. Once again, what we seem to have here is evidence of ongoing discussions at the same time as the case proceeded through the Roman court system. The negotiations might even have been somewhat more hostile than the previous example: Besas not only summoned Babatha before the governor (P. Yadin 23) but also threatened to re-register what she considered

⁹⁰ P. Yadin 22, l. 10: ἀντὶ τῆς προ[ο]υκός μου καὶ ὀφειλῆς; cf. P. Yadin 21, ll. 11–12: ἀντὶ τῆς σῆς προ[ο]υκός καὶ <ὀ>φειλῆς. The nature of the transaction in these two documents has been much disputed: see Chapter 1, p. 53, n. 96.

⁹¹ Roman legal remedies to reclaim such property were interdicts *unde vi* and *de vi armata*: see C.8.4; *Inst.* 4.15.6; D.43.16. See also the comments at Chapter 1, p. 55, n. 104.

⁹² This does not appear to have been in harmony with Jewish law: see Introduction, p. 11, n. 25, and Chapter 1, pp. 56–7, for further comments and bibliography.

her rightful possessions unless she cooperated. This appears to be a bid on Besas' part to resolve the matter more quickly than the Roman system might allow. So the appeal to the governor's court is used in tandem with other threats and negotiations and indeed the lengthy process it involved might have led to Besas escalating his threats against Babatha in order to attempt to resolve the issue more swiftly.

Despite this apparent wish for speedy action, there is then an interval of eight months before the next document, P. Yadin 25, was written on 9 July 131 CE. This is possibly accounted for by the fact that Besas had fallen ill, as mentioned in this papyrus, although again we should allow for the possibility that the parties had perhaps been continuing the dispute out of court for a while. Consequently, Julia Crispina alone summoned Babatha, 'pursuant to the subscription of his Excellency the governor'.⁹³ This, then, is clear evidence that a petition had reached the governor or his staff and they had decided to let it proceed—this might have been either the original petition, submitted by Besas prior to writing P. Yadin 23, or a subsequent one in between. The summons is to attend in Petra until the case is heard and, again, is on account of holding by force what Julia Crispina claims are the orphans' properties. Crispina added a further warning: if Babatha does not appear, she will be answerable to the governor.

The papyrus then records a counter-summons by Babatha herself, who stated that Julia Crispina had summoned Babatha on a previous occasion. Babatha had submitted a 'memorandum' (πιττάκιον) against her and the governor 'instructed me [Babatha] by his subscription to perform the legal formalities with you in Petra'.⁹⁴ Babatha then goes on: 'now, therefore, I summon you first before his Excellency the governor in Rabbath-Moab'.⁹⁵ She rejects the basis of Julia Crispina's summons, who replies that if Babatha has any complaint, she should attend before the governor.

This papyrus contains the most mentions of the governor and concrete citations of his subscriptions of any document in the two archives. There were at least two petitions to him, including Babatha's

⁹³ P. Yadin 25, ll. 6–7/38–9: κατὰ τὴν ὑ[πογραφ]ῇν τοῦ κρασίστου ἡγεμόνος.

⁹⁴ P. Yadin 25, ll. 53–5: ὑπέγραψέν μοι εἰς Πέτραν σὺν ὑμῖν τ[ὰ ν]όμιμα χρᾶ[σ]θ[αι] (cf. the badly fragmented inner text at ll. 20–1).

⁹⁵ P. Yadin 25, ll. 21–2/55–7: καὶ τὰ νῦν παραγγέλλω σοι πρώτως πρὸς τὸν κράτις[τ]οῦ ἡγ[ε]μό[ν]ος εἰς Ραββαθμοαβα.

‘memorandum’, both of which he allowed to proceed. This may have been on account of the familiarity of the complaint about unlawful possession (mentioned above, p. 194) and the fact that Babatha could claim in response that the lands were in fact registered to her. As such, the case was not obviously clear-cut and merited a hearing.

What comes out of this papyrus most strongly, however, is the way in which the parties seem to use the power to summon each other in a game of one-upmanship. Babatha is emphatic that she summons Julia Crispina first, and changes the place from Petra to Rabbath-Moab. The governor may have been due there sooner than in Petra (or later, if Babatha was trying to delay matters), making this an attempt to control the timing of the dispute. Rabbath-Moab was, in any case, closer to Maoza and, therefore, probably more conveniently situated for Babatha. The important point, however, is that she wished for the dispute to come before him on her terms. Indeed, both she and Julia Crispina seem determined to be the one in control of the situation—the one who summons rather than the one who is summoned. They will each attend court on their own terms, not that of their rival. The summons procedure and the appearance before the governor are, therefore, used as part of a power play in negotiations. Both attempt to deploy it as an intimidation tactic and thereby become engaged in a semi-rhetorical battle over who is controlling whom.

The final papyrus relating to Judah’s estate is P. Yadin 26, written on 9 July 131 CE, the same day as P. Yadin 25. Here Babatha summons Miriam before the governor over the items she has seized in Judah’s house, again stating that she should attend until judgment. The papyrus also records that Miriam had previously summoned her not to go near Judah’s possessions, stating that Babatha had no claim. Once again, summonses seem to be flying back and forth: presumably each had previously also had their cases approved by the governor.⁹⁶ If not, then we might question whether these litigants strictly adhered to what appears to be the process in Roman Arabia or whether they were willing personally to send out a summons merely as a threat.

It seems apparent that the parties to this particular case use the governor’s court as a threat and intimidation tactic in conducting

⁹⁶ P. Yadin 34 preserves remnants of what seems to be a petition by Babatha against Miriam, addressed to the governor. It is, however, so fragmentary that it offers us little further information.

their negotiations. This is why there is such a battle in P. Yadin 25. The issue is less how the governor reacts to the documents and more how the provincials react to the governor.

THE SPECTRE OF THE ROMAN COURT

In both cases, we can see the provincials using the presence of the governor's court in their negotiations with their opponents. In each dispute, this is deployed as an intimidation tactic. Additionally, in the dispute over Judah's estate, each side clearly wished to take control of the summoning procedure and thereby exert control over the opposing party. The documents, therefore, suggest that the spectre of the governor's court loomed over the cases as they progressed. Provincials pursued claims through it in addition to negotiating on the side. This mirrors the pattern that Kelly has already observed in certain cases in the Egyptian material, where:

In some cases, the processes of petitioning and litigation could have an impact on dispute resolution even if the matter never reached the stage of final adjudication by the judge. Far from purely being the last resort of the desperate, used only when all other mechanisms of dispute resolution had failed, the legal system in some cases was used to help bring about a private settlement.⁹⁷

And yet these provincials always had to allow for the possibility that they might eventually end up in the Roman court, even if they were trying to avoid that eventuality. Thus, this particular legal forum becomes something which is used as part of the negotiation process, even though litigants may have hoped and even earnestly intended that cases were never actually decided in that forum.⁹⁸

But why negotiate on the side like this? Why deploy multiple methods? To put it in the bluntest possible terms: such negotiations,

⁹⁷ Kelly (2011: 285); see Kelly (2011: 244–86) more generally on this subject. This contrasts with the model earlier advanced by Hobson (1993: 199–200), who saw recourse to law as the ultimate stage in a dispute.

⁹⁸ The behaviour described here bears comparison with that involved in modern divorce settlements, as analysed by Mnookin and Kornhauser (1979). In particular, the influence of the uncertainty principle in encouraging (some) people to settle also owes much to the ideas on 'bargaining in the shadow of the law' in that study.

such multiplicity of methods increased disputants' chance of securing a favourable resolution to their conflicts. The Roman court was an unpredictable forum, as we saw in the first section of this chapter (pp. 167–87): apart from the potential lack of familiarity on the part of peregrines with Roman institutions, at least initially, the Roman officials themselves were not machines. Their decisions could vary, and the atmosphere of uncertainty that surrounded the court meant that canny litigants did not place all their hopes of victory in adjudication in this arena. They bargained, they threatened, they negotiated, while all the time also keeping this ultimate option open.

Consequently, the two paths were not at all separate. Not only did negotiations take place at the same time as litigants were advancing their cases towards Roman institutions, but they used the threat of the Roman provincial court in order to secure better terms for themselves in their bargaining: they deployed the threat of the imperial authorities' legal forum with a view to intimidating the other party into submission. This was supposed to be effective because of the uncertainty principle: even if the other party believed they were in the right, they would not necessarily obtain a favourable judgment from the unpredictable Roman judge. Of course, the same was true of both sides, but litigants still appear to have employed the Roman process as an intimidation tactic, presumably hoping that the other side would back down before they did or before the case actually reached the governor's court.

The presence of the Roman court, therefore, had broad ramifications for dispute resolution in Roman Arabia, far beyond what actually happened within its confines. Information, perceptions, and fears about this institution fed into the general legal culture of the community, resulting in a situation where their use of the Roman courts was, in all likelihood, probably much more nuanced than straightforward appeal in the hope of eventual judgment.

Conclusion

The declared aim of this book was to write an agency-based history of law in the Babatha and Salome Komaise archives, a study of what I have termed the 'legal culture' of their multi-legal community. In view of this, I stated in the 'Introduction' that anyone who was looking for an answer to questions about the definite 'operative law' of the archives would be sorely disappointed. If anyone has read this far still hoping for that, I am afraid the answer will still not be found in these last pages.

But having said that, I am bound to acknowledge that the 'systems' and 'culture' approaches that have been contrasted throughout are not entirely separate beings, nor are the advances in scholarship that come from the 'legal pluralism' or 'multi-legalism' realm independent of the idea of legal 'systems'. Indeed, in saying there are multiple laws, or traditions, in a community we almost have to buy into the idea of different options and separate 'systems' that coexisted, and from which people could pick and choose. Similarly, in assessing levels of legal knowledge in Roman Arabia, it is still tempting and perhaps even necessary to fall back on comparisons with what we think was laid out in one or another 'system'; how, for example, should the *actio tutelae* really have been used according to our legal sources as collected in the *Digest*? We may then say that, in fact, it was not used in this way, and we should not even expect it to have been, but the comparison has also already been made. The connection between the two approaches must therefore be acknowledged. Following this, I feel compelled to reiterate that previous work on these archives, of the type that has sought to set them within one or another legal framework, is still of immense value for the kind of 'ground-up' approach I have chosen to adopt.

What I have called the ‘systems’ approach also has something of an advantage over the ‘culture’ one; namely, it leads to a more definable conclusion, which is often easier to formulate into a concise, pithy ending. The ‘culture’ idea, however, results in an altogether less definite, messier picture. This does not mean it fails to get us anywhere, just that the ‘somewhere’ is perhaps less easy to summarize than coming down on one side or another in the ‘systems’ debate. To come back to Lawrence Friedman, his remarks on law and social studies more generally are characteristically to the point:

What, on the whole, have they [these studies] accomplished? Not much, in one sense: no sweeping general laws, no break-through that would make somebody’s heart pound, no magic discoveries that change the face of the earth. But in another sense a great deal *has* been accomplished. Small insights, careful studies of particular institutions—there is no reason to look down on these.¹

Furthermore, while I have felt obliged to point out the connected nature of the two approaches, a line must also be drawn in the sand. This particular boundary is a question of perspective. Identifying different ‘systems’ to which ‘laws’—legal procedures, legal clauses or phrases, particular formulae—belonged is a legitimate academic exercise, but what I hope the present study has questioned is the idea that this can be transposed onto the ancient mindset. Provincials in particular did not think in terms of ‘systems’ and picking between them, they thought in terms of authorities (see Chapter 4): how to appeal to them, how to gain their favour and thus win their help with enforcement, or how to harness certain concepts of authority to lend weight to their documents and transactions. This separation between our own analytical tools and how people in the ancient world viewed their dealings is a vital distinction to make when we consider law in the ancient world, and one that is not always made as clear as it should be.

This is perhaps where the messier, murkier conclusions from the ‘culture’ and ‘multi-legalism’ spheres begin to gain strength and become more helpful in trying to understand the world of the archives. The operation of law in the provinces—or at least in the particular province of Roman Arabia—was all far more complex, far more contingent and dependent on the particularities of transactions

¹ Friedman (2005: 14).

than we might like to believe. The way disputes played out and were resolved was influenced, perhaps even determined, by the people involved in them, as well as by local indigenous orderings and local institutional frameworks.

But 'the people involved' is an oversimplification in itself too, and needs to be untangled. People come from different backgrounds: social, economic, ethnic, religious, linguistic, cultural. The list could continue almost *ad infinitum*. And they bring all this to their daily business—legal, as much as anything else. Two aspects have repeatedly come to the fore throughout this book and are worth explicit mention here, though I should emphasize that this is not to underplay other factors or imply any kind of separation between the different elements.

The first of these factors is that of language capabilities. These are multilingual archives, in which different people very obviously have very different capabilities in different languages. This creates a myriad of possibilities for interactions and means that 'literate'—to employ a terribly homogenizing term (see Chapter 2)—had an extremely important role to play in legal transactions. Scribal competencies formed a key point of discussion here, but linguistic capabilities and the effect of these have come up again and again. Lack of literacy or language skills did not make people powerless, or mere passive bystanders in their legal transactions, but it does change the way we should view their involvement in the creation of these documents, which in turn has implications for the 'choice of law' question. The parties themselves could contribute to their documents in a variety of ways (see Chapter 4), but this was through a complicated process of interaction with their scribes, advisors, and probably other literates whom they trusted, whereby wishes would be expressed, documents read back and perhaps verbally translated, altered, and redrafted—or claimed to be redrafted, since there was not necessarily a guarantee that a scribe would obey. Thus, perhaps the key point to come out of Chapters 2 to 4 is the emphasis on explicitly understanding these documents as the results of collaborative processes.

The second factor, again not at all unrelated to the first, is that of 'knowledge'. Like language capabilities, levels of legal knowledge of various different 'systems' varied greatly. Comparisons between the level of Roman legal knowledge of a Roman jurist, for example, and Babatha would be so absurd as to be laughable. But the comparison does not need to be so extreme to be significant. 'Advisors' were

certainly present in Roman Arabia and had knowledge of a specific type (Chapter 3), which could differ in both level and nature from that of scribes (Chapter 2), the parties (Chapter 4), and the Roman officials themselves (Chapter 6). Local justice institutions like those discussed in Chapter 5 would also have their own contexts and their own understandings of particular situations, resulting in perhaps a different kind of 'legal' knowledge from that discussed with regard to other agents.

These different understandings, based on different levels of knowledge, encountered each other in legal transactions. Sometimes they may have matched up, overlapped, or supplemented each other. Sometimes they conflicted. But each interaction between agents was in itself an exchange of knowledge, understandings, and ideas that could have more or less significant consequences for the way that a particular case proceeded and was resolved. Furthermore, the consequences could go beyond that one case, since the agents in question learned from their exchanges and brought their experience to their next transactions.

Different levels of knowledge could also be exploited and used as tactics to seize the advantage in a dispute (as was suggested in the discussion of P. Yadin 28–30 in Chapter 3). Especially with regard to the Roman imperial authorities, a general uncertainty about 'the rules' or the reaction of imperial agents could also be deployed in this way, and claims to greater knowledge of or experience with the Roman authorities were powerful bargaining chips.

This brings us to the question of relationships, networks, and connectivity. The picture I have painted is one that emphasizes the importance of local situation and specific agents at all times, but it is not an image of Maoza, Babatha, or Salome Komaise as operating in isolation. Particularly when it comes to tracing and considering how legal knowledge was acquired, the interactions that are emphasized create networks in which information and ideas were shared. This could be a deliberate, friendly process or a result of confrontations. It also created local relationships between the people involved. How we characterize these can affect how we understand the operation of law in this community. For example, how much trust was there between a litigant and her scribe or advisor? Was this instead purely an economic relationship? Convenience, habit, and even gossip should also not be underplayed in delineating these connections, particularly in choosing a scribe or advisor. Sometimes these choices may not

have been as considered or deliberate as we would at first think, and people simply used the only writer available. This could have been the case in the early years of the province in particular, when linguistic capabilities may have been more restricted. Or they may have chosen someone whom they knew locally or had employed before.

But such relationships and connections are not restricted to the village of Maoza and also interact with the wider ancient world. P. Yadin 28–30, for example, represents some sort of connection with Roman legal literature, and its presence in the archive shows that someone in Maoza had access to a wider, literature-sharing network. Furthermore, the governor and those surrounding him were foreign representatives, and so their presence created a relationship between peregrines and Romans that had the potential at least to go beyond the village context. Thus, there is certainly a wider world into which these archives—and this study—fit, which spreads beyond the village of Maoza. To state that understanding the legal life of Maoza pertains to Maoza alone would, therefore, be to misunderstand the processes that have been outlined, and would miss the wider implications that understanding the archives can have for the operation of law elsewhere in the empire. Thus, to separate these documents from their much broader context would be a huge error.

Yet, I posit and emphasize the idea of ‘localized law’ because of the importance of specifics in the operation of law in the archives: specifics as to situation, agency, knowledge, and all those other factors that have already been raised. I have framed this structurally in terms of agents, but it goes beyond this. The operation, understanding, use, and even the concept of ‘law’ in these documents are highly dependent on issues of geographic location, the formulae available, wealth, and linguistics, not to mention much broader concerns of cultural, social, ethnic, or ‘religious’ backgrounds. What I suggest is that these archives allow us a rather precious glimpse into the effect of all these concerns on the functioning of justice, on legal transactions, and on dispute resolution in this particular small community. Such a concentrated glimpse into a village outside Egypt in the ancient world is not often offered, making it a valuable point of comparison that could perhaps be pushed further in the future than I have done here. ‘Localized’, then, is not just a reference to geography, but a metaphor for this focus on the particularities involved in each case.

I feel the need in concluding also to point briefly to a few absences in my study of the archives. This is not so much a defence of the

absences as a highlighting of them: absences can, in themselves, be telling. The first is the issue of women's history or gender concerns, which I have not foregrounded but which has been tackled fruitfully in the past.² These are family archives, but at least two of the main protagonists are women: more than two, when we consider also Shelamzion, Miriam, Salome Grapte, and so on. While certain features of the way they deal with their legal business are obviously affected by their gender—the use of a male guardian in Greek language documents, for example—what is also striking is the apparent freedom they have in their legal business. Being a woman in Maoza does not stop them owning property, making complaints, and, at least in Babatha's case, pursuing her claims tenaciously with the Roman imperial authorities. Much more could be said on this subject and in much greater complexity, but I shall not be the one to say it, or at least not here. For now, it is worth repeating that throughout we have been talking about women and their legal business in antiquity and that if their gender has not been a prime topic of discussion, perhaps that has implications for how we understand their legal lives in and of itself.

The second absence is the lack of emphasis that the protagonists or the people they encounter seem to place on their Jewish identity. The only explicit references to such an identity are in P. Yadin 12, when Babatha's son is called a *Ἰουδαῖος*, and in the reference to the law of Moses and the Judaeans in P. Yadin 10. Perhaps this is due to the nature of the documents, and there was simply no need to proclaim a Jewish identity in such a way. But the absence should still be considered and again could be telling. What it meant to be a Jew—or indeed, perhaps I should be using the word Judaeans³—in antiquity is a topic of hot debate. What these archives could add to the issue of Jewish/Judaeans identity in antiquity should, therefore, not be overlooked, and the authenticity of the parties' 'Jewishness' should not be questioned just because it does not seem pronounced. Jews could conduct their legal business exactly as gentiles could, and we should not expect or demand that they use—explicitly or implicitly—'Jewish law' in their business at all times. Indeed, what that term even means in this context is hugely problematic. And here we come back to specifics: if it is possible that 'Roman law' was interpreted and applied,

² See, for example, Ilan (2000).

³ Whether to use the term 'Jew' or 'Judaeans' is a source of extremely heated debate in modern scholarship: see Introduction, p. 8, n. 14.

and even conceived, differently from place to place, depending on the people involved—as I have suggested throughout—then perhaps we should allow for this too in understanding ‘Jewish law’. A grand, unified concept might be more satisfying and more useful as an analytical and descriptive tool for us, but it does not necessarily get to the bottom of the complexities and potentially huge range of understandings in this period of antiquity, particularly when considering the wide geographic spread of Jewish communities across the Roman Empire.

Thus, understanding the legal world of these archives from the ground up could have far-reaching consequences for a variety of other topics in antiquity. But with regard to the operation of law in Maoza, what I hope to have demonstrated is that an admittedly messier, but richer, more complex picture can be gained by adopting such an explicitly ‘ground-up’ approach, and considering at all times the contributions, capabilities, situation, and interactions of the people involved.

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